

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 WESTERN DIVISION

4 -----X
5 -----X

6 UNITED STATES OF AMERICA, :
7 Petitioner, :
8 v. : CASE NO. 5:10-HC-2009-FL
9 DANIEL KING, :
10 Respondent. :
11 -----X

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15 BENCH TRIAL (VOLUME I)

16 OCTOBER 17, 2011

17 HONORABLE JAMES E. GATES, PRESIDING

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23 Reported by: Glynde M. Jones

24 Court Reporter

25 Notary Public

ORIGINAL

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1	CONTENTS	
2	THE WITNESS: GARY ZINIK, Ph.D	EXAMINATION
3	BY MR. LOCKRIDGE	14, 188, 199
4	BY MR. BELL	134, 194
5	THE WITNESS: DANIEL KING	EXAMINATION
6	BY MR. GRAY	202
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 THE COURT: Good morning, folks.

2 AUDIENCE: Good morning, Your Honor.

3 THE COURT: We're here this morning for the
4 commitment hearing in the case United States of America
5 versus Daniel H. King. Before we get started with the
6 hearing itself -- solicit any housekeeping comments from
7 counsel, I had a few of my own. I can tell you that my
8 goal will be to after today start court at nine, take an
9 anticipated hour lunch break at noon and work until
10 somewhere between 4:30 and five with a morning break, of
11 course, and an afternoon break of 10 to 15 minutes or
12 so. I notice that the exhibit notebooks have been
13 submitted, and I do appreciate that.

14 I wanted to inquire of counsel if they wished
15 witnesses to be excluded pursuant to Evidence Rule 615
16 during this hearing. Mr. Bell, do you have any thoughts
17 on that?

18 MR. BELL: Your Honor, we do not have any
19 desire for the witnesses to be excluded. It will be fine
20 if they stay in the courtroom.

21 THE COURT: Mr. Lockridge?

22 MR. LOCKRIDGE: No, Your Honor. Our expert
23 witnesses are available to be here.

24 THE COURT: Okay. That's fine. Are there any
25 housekeeping issues that counsel would like to take up?

1 MR. BELL: Your Honor, we had over the last
2 couple of days, end of last week and over the weekend
3 made a determination that there was some additional
4 exhibits that needed to be put on the pretrial order --
5 the one that you signed.

6 THE COURT: That's fine.

7 MR. BELL: Most of them are mine, but there
8 were a couple of actual pages that had been left out of
9 one pretrial order that the Government needed to add in.
10 I prepared a final pretrial order for The Court. If you
11 wouldn't mind, I'll hand it you, and the Government is
12 in concurrence with me doing that.

13 THE COURT: That's fine. Is it possible for
14 you to point out the difference?

15 MR. BELL: On the Government's side, I believe
16 it's exhibit -- help me out mere.

17 MR. LOCKRIDGE: Yes, Your Honor, I can do
18 that. Exhibit 23, there was a clerical issue and we
19 added Bates stamp page 1956. There was one page --
20 Exhibit 23 that was blank, so we added a page that had
21 the actual information on that document.

22 THE COURT: That's Exhibit 23 you're referring
23 to?

24 MR. LOCKRIDGE: Yes, Your Honor. That is in
25 the trial notebook as well. And then I believe at

1 Exhibit 34, Your Honor we added two documents to Exhibit
2 34.

3 THE COURT: I see. Yes. I see that. Are those
4 the only changes for the Government?

5 MR. LOCKRIDGE: I believe so, Your Honor,
6 depending on which -- possibly Exhibit Five would
7 contain a date correction. It's the same exhibit.

8 THE COURT: Okay.

9 MR. LOCKRIDGE: Just a clerical change on the
10 date possibly. That's our only changes, Your Honor.

11 MR. BELL: And, Your Honor, in our case, we
12 added Exhibit 16 which is an article by Thomas K.
13 Zander, and there's a hearsay objection to that
14 article. Exhibit 17, another article by Jack Vognsen and
15 Amy Phenix. There is a hearsay objection to that.
16 Article, 18 by Theodore Donaldson and Brian Abbott.
17 The Government also has a hearsay objection to that.
18 Article 19 is a book, Sex Offenders - Identification,
19 Risk Assessment, Treatment, and Legal Issues, edited by
20 Fabian Saleh and others. There's also a hearsay
21 objection on that exhibit.

22 Exhibit 20 is a letter from Marlene King to
23 Nicole Weaver dated March 1st of 2010. There is no
24 objection to that. Exhibit 21, a Coalinga State Hospital
25 Civil detainee patient rights document, there's no

1 objection to that. And, finally, Exhibit 22, the APA
2 Ethical Principles of Psychologists and Code of Conduct,
3 and there is no objection to that exhibit. That would be
4 the extent of the changes for the Respondent, Your
5 Honor.

6 THE COURT: Okay. I've executed this amended
7 proposed joint pretrial order and I will direct that it
8 be filed, although for the time being, I'm going to hang
9 on to it so that I can refer to it. Mr. Gray?

10 MR. GRAY: Your Honor, if The Court is willing
11 to entertain our thoughts on the hearsay objection that
12 we made to the additional exhibits, it's our
13 understanding under 803(18) that these documents,
14 although relied upon by the experts in the course of
15 making their evaluations, are not admissible as
16 substantive exhibits. We understand that The Court in
17 its gatekeeping function can properly weigh this
18 evidence, and we more or less made sure that we want to
19 make -- preserve our hearsay objection for the record.
20 However, we do understand that in terms of overall
21 weight and consideration, that's something that The
22 Court will take -- well, can take judicial notice on.

23 THE COURT: Very good, sir. Mr. Bell?

24 MR. BELL: Your Honor, our response would be
25 we would ask The Court to just reserve the ruling on

1 those objections until the documents are actually used
2 so that The Court can make the proper determination on
3 the use and weight of the documents at that time.

4 THE COURT: Very good. I am reserving my
5 ruling, but I appreciate the comments by counsel. Any
6 further housekeeping matters?

7 MR. LOCKRIDGE: Just one, Your Honor. Pursuant
8 to that pretrial order, Your Honor, both parties have
9 stipulated to the admissibility of Government's Exhibit
10 One through 57, so we would offer those into evidence.

11 THE COURT: Any objection, Mr. Bell, to any of
12 those exhibits?

13 MR. BELL: No, Your Honor.

14 THE COURT: Those exhibits will be admitted.

15 MR. BELL: And, Your Honor, with regard to our
16 exhibits, we would ask that the ones that there are no
17 objections to it be admitted into the record, and I can
18 specify those. That would be Exhibits One through 15 and
19 then Exhibits 20 through 22.

20 THE COURT: Mr. Lockridge, any objection to
21 those exhibits?

22 MR. LOCKRIDGE: Well, only with respect to
23 Exhibits Six and Seven, Your Honor. Those are
24 depositions, so we'd object to those as hearsay.

25 MR. BELL: I'm sorry, Your Honor. I missed

1 those objections. Again, we would just ask The Court to
2 reserve ruling on those, but the other exhibits, we
3 would ask that they be admitted at this time.

4 THE COURT: One through Five, then Eight
5 through 15 and 20 through 22. Did I get those numbers
6 right? That is, Respondent is moving for admissions of
7 Exhibits One through Five, Eight through 15 and 20
8 through 22?

9 MR. BELL: That is correct, Your Honor.

10 THE COURT: No objection, Mr. Lockridge?

11 MR. LOCKRIDGE: No, Your Honor.

12 THE COURT: Okay. Very good. I'll admit those
13 exhibits then and reserve ruling on the objection to the
14 others. Gentlemen, any further housekeeping type
15 matters?

16 MR. LOCKRIDGE: No, Your Honor. We'd just like
17 to give a brief opening.

18 THE COURT: Let me -- before we get -- and
19 I'll certainly allow both sides the opportunity to
20 provide a brief opening. I just want -- I know Mr. King
21 has, I'm sure, gone over this in some detail with his
22 counsel, but, Mr. King, I just want to give you a brief
23 advice of the rights that you have in connection with
24 this hearing.

25 You have the right to be represented by

1 counsel, and if you're financially unable to obtain
2 adequate representation, then counsel will be appointed
3 for you pursuant to Section 3006A, Title 18. In fact,
4 Mr. Bell has been appointed as your counsel, as you
5 know.

6 You have the right to testify at this
7 proceeding if you care to do so. In addition, you may
8 present evidence. You may subpoena witnesses on your
9 behalf. That is, you have the right to have The Court
10 issue orders directing witnesses to come to trial -- to
11 come to this hearing, I should say, so that they may
12 testify on your behalf, and you have the right to
13 confront and cross-examine witnesses who appear at the
14 hearing.

15 Very good. Why don't we begin then with
16 opening statements? Mr. Lockridge?

17 MR. LOCKRIDGE: Thank you, Your Honor. May it
18 please The Court, Counsel, Mr. King has been in the
19 custody of the Bureau of Prisons pending a
20 determination, as you know, as to whether he meets the
21 criteria as a sexually dangerous person under 4248.
22 During this evidentiary hearing, the Government will put
23 forth testimony to show by clear and convincing evidence
24 that Mr. King is, indeed, a sexually dangerous person.

25 Now, the Government will put on evidence by

1 Doctor Gary Zinik who is a psychologist who evaluated
2 Mr. King for purposes of 4248. Also, you'll hear
3 testimony from Doctor Dawn Graney, another psychologist
4 who works for the Bureau of Prisons who evaluated Mr.
5 King for -- under the statute. You'll also have the
6 opportunity to hear from Mr. King himself, his testimony
7 and other evidence that the Government will put on, and
8 at the conclusion of all that evidence, the Government
9 proffers that will show that Mr. King is a sexually
10 dangerous person, number one, that he's engaged or
11 attempted to engage in sexually violent conduct or child
12 molestation, that he suffers from serious mental
13 illness, abnormality or disorder and that he will have
14 serious difficulty refraining from sexually violent
15 conduct or child molestation if released.

16 Thank you, your Honor.

17 THE COURT: Mr. Bell?

18 MR. BELL: Thank you, Your Honor. Mr. King is
19 a 53 year old divorced individual. The evidence will
20 show that he has a significant criminal history, that he
21 spent the last 23 years in the custody of the Bureau of
22 Prisons. The evidence will show that his sentence was to
23 expire on January 20, 2010, and the evidence will show
24 that he was certified as a potentially -- precertified
25 as a sexually dangerous person one day before his

1 release, expected release from the Bureau of Prisons.

2 The evidence will show that other than a
3 charge of indecent exposure in 1974 as a 15 year old,
4 he's not been charged or convicted of a statutorily
5 defined sex offense. The evidence will show that he has
6 not been a choirboy, he has been in serious trouble in
7 the past, and he's also been involved in some
8 infractions and issues while he's been in the Bureau of
9 Prisons. The evidence would show that.

10 Now, you'll hear -- as Mr. Lockridge
11 indicated, you will hear from two experts for the
12 Government, Doctor Zinik and Doctor Graney and then you
13 will hear from one expert for the Respondent, a Doctor
14 Fabian Saleh. The evidence would show that Doctor Zinik
15 diagnosed Mr. King with a paraphilia not otherwise
16 specified, forced sex with nonconsenting females, also
17 known as paraphilic coercive disorder, exhibitionism,
18 polysubstance abuse and antisocial personality disorder
19 and that he is a sexually dangerous person under the
20 act.

21 The second Government expert, Doctor Graney,
22 will present evidence or an opinion that Mr. King
23 suffers from paraphilia not otherwise specified,
24 nonconsent, exhibitionism, alcohol abuse, opiate abuse
25 and antisocial personality disorder, and she will opine

1 that he is a sexually dangerous person under the act.

2 However, Doctor Saleh, the evidence will show,
3 is a Board certified psychiatrist, and he will give an
4 opinion that Mr. King only suffers from an antisocial
5 personality disorder and that he presents with a history
6 of heroin, marijuana, cocaine, methamphetamine and
7 alcohol abuse.

8 It's our position that at the close of all
9 the evidence in this hearing based upon the testimony
10 and the submissions of the parties that The Court will
11 conclude that the Government has failed to establish by
12 clear and convincing evidence that Mr. King is a
13 sexually dangerous person under the act. Thank you, Your
14 Honor.

15 THE COURT: Thank you, sir. Mr. Lockridge,
16 I'll be happy to hear any evidence the Government cares
17 to present.

18 MR. LOCKRIDGE: Thank you, Your Honor. The
19 government calls Doctor Gary Zinik.

20 GARY ZINIK, having been duly sworn, was
21 examined and testified as follows:

22 (Whereupon off the record.)

23 MR. BELL: Your Honor, if I might, before we
24 get started, I think Mr. Ross had something he wanted
25 The Court to hear, and I apologize for not bringing it

1 up sooner. I just remembered -- just something brief
2 that I think he wanted to address The Court in another
3 case. I'm sorry.

4 (Whereupon off the record.)

5 THE COURT: Mr. Lockridge?

6 COURT CLERK: Sir, please state your name for
7 the record.

8 THE WITNESS: My name is Gary Zinik.

9 THE COURT: Doctor Zinik, let me just comment
10 briefly. If there happens to be an objection to a
11 question that's asked of you during your testimony, I'd
12 request that you wait until The Court issues a ruling on
13 that objection and instructs you to proceed before
14 answering. And, of course, that's -- I'm sure you're
15 aware of this, but after Mr. Lockridge asks you
16 questions, I'm sure Mr. Bell is going to have some
17 questions for you as well.

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Very good. Mr. Lockridge?

20 MR. LOCKRIDGE: Thank you, Your Honor.

21 EXAMINATION

22 BY MR. LOCKRIDGE:

23 Q How are you employed, Doctor Zinik?

24 A I'm a licensed psychologist in private practice.

25 Q All right. And could you please refer to

1 Government's Exhibit Six? It's in the white binder in
2 front of you.

3 A Okay.

4 Q What is that?

5 A This is a copy of my resume.

6 Q Is that a current copy?

7 A Yes, it is.

8 Q And does it fairly and accurately depict your
9 education, employment, training and credentials as they
10 relate to your employment as a psychologist?

11 A Yes, it does.

12 Q Doctor Zinik, could you please just go through
13 your educational background beginning with your
14 undergraduate degree, please?

15 A Okay. I have an undergraduate degree in
16 psychology from Stanford University that I got in 1976.
17 I have master's degree in counseling and consulting
18 psychology from Harvard University, received in 1979,
19 and my Ph.D in counseling, psychology and education was
20 from the University of California-Santa Barbara that I
21 received in 1983.

22 Q All right. And what professional licenses, if
23 any, do you currently hold?

24 A I'm a licensed psychologist in California and I
25 also have a provisional license in Washington State to

1 practice psychology. Those are my licenses.

2 Q All right. And how long have you been a licensed
3 psychologist?

4 A Since 1987 in California and 2004 in Washington
5 State.

6 Q Do you specialize in any particular area of
7 psychology?

8 A I do. I've been specializing in forensic
9 psychology since I was licensed in the late 1980s, and
10 in particular, my specialty is risk assessment of sexual
11 offenders. I do -- I've been doing evaluations and some
12 treatment of violent offenders since I was licensed, and
13 that's really primarily what I do.

14 Q Could you just briefly explain what risk
15 assessment of sex offenders means?

16 A Okay. Well, risk assessment of sex offenders is
17 a type of psychological evaluation in which I do a
18 thorough case history. You know, these are offenders who
19 were referred to me by -- in -- several sources.

20 I'm on the panel of SVP evaluators in California
21 State, and I've been doing that since the law took
22 effect in 1996, and so I'm sent the cases from the
23 Department of Mental Health. And these are offenders who
24 are currently in prison who are approaching release and
25 completion of their sentence, and they have met certain

1 criteria and have convictions for sexually violent
2 crimes in their history, and I am asked to do risk
3 assessment evaluations which involves determining
4 whether they meet certain legal criteria as a sexually
5 violent predator and evaluating the probability that
6 they may reoffend in the future and commit future
7 sexually violent crimes.

8 I also get referrals from the Public Defender's
9 office in Ventura County, California, my home county.
10 I've been working for them for -- you know, since I was
11 licensed in the late 1980s, and private attorneys, some
12 from the district attorney's office, and I've been
13 working for the US Attorney's office for about a year
14 now. I started last October, 2010.

15 Q All right. Earlier I believe you mentioned
16 California Department of Mental Health. Can you explain
17 that relationship? The work you do for them, how does
18 that work?

19 A I'm a contract -- independent contract evaluator
20 on the panel of psychologists that is contracted with
21 the State Department of Mental Health. I've been doing
22 that since 1996 and we -- you know, I had to apply and
23 submit credentials to be accepted as a member of the
24 panel, and as a member of the panel, I am referred these
25 SVP evaluations.

1 We are expected to be a neutral, unbiased
2 evaluator. In other words, we're not working for either
3 the defense or the prosecution, but we're employed by
4 the Department of Mental Health, and we get referred a
5 case or sent a file, a digital file which contains all
6 the criminal records and clinical records and so on on a
7 case, and I review all those materials and then I
8 schedule an interview to visit the inmate who's in one
9 of the State prisons somewhere around California and I
10 travel to the prison, I review the prison files and the
11 mental health files and then interview the inmate and
12 then go home and write up a report to determine whether
13 they meet the legal criteria as a sexually violent
14 predator.

15 Q And you mentioned the acronym SVP. You're
16 talking about sexually violent predator?

17 A Yes.

18 Q Is that the State term for --

19 A Yes, it is, in California, yes.

20 Q Okay. So that was California Department of
21 Mental Health. You also worked for the -- you do
22 contract work for the Washington State Joint Forensic --

23 A Yes, I have since 2004 and I have a couple
24 ongoing cases that are still in process for the -- it's
25 through the Department of Health and Social services,

1 but I don't do much work up there since I started here
2 at the US Attorney's Office. I've, frankly, been so
3 busy, I haven't taken new cases up there.

4 Q How much of your practice pertains to issues
5 related to sex offenders percentage wise?

6 A Well, I would say -- question was how much of my
7 practice involves working with sex offenders? I would
8 say 95 percent. I would say probably three fourths of
9 that involves forensic evaluations, and then I do some
10 treatment of private clients in my private practice who
11 are typically sex offenders who are on probation for
12 lower risk sex offenses and are required to go to
13 treatment as a condition of their probation.

14 Q And approximately how many -- if you can
15 estimate, how many sex offenders have you evaluated for
16 civil commitment purposes in any jurisdiction?

17 A I don't have an exact number, but I'm going to
18 guess around 500.

19 Q For what jurisdiction? Did you explain what
20 those --

21 A California, Washington State, US Attorney's
22 office and private clients and Public Defender's office
23 in Ventura County.

24 Q I know you mentioned some of 'em were
25 independent evaluations. Approximately what percentage

1 of those were for the individual, the government and
2 then independently?

3 A Approximately how many were for the government
4 and how many were --

5 Q For the respondent.

6 A For the respondent? Okay. Well, the majority --
7 well, again, the evaluations that come from the State
8 Department of Mental Health were not from either side,
9 so to speak, but -- if you ask me what was my percentage
10 of cases in which I found the offender to meet the
11 criteria under California law, I would say approximately
12 I think 35 to 40 percent. Again, I don't have an exact
13 number, and so but most of the testifying I've done has
14 been for the prosecution, but I have certainly -- I have
15 evaluated, again, I'm going to guess around 50 percent
16 evaluations for the respondent in SVP type cases, and
17 I've testified once for the defense.

18 Q All right. You mentioned that you opine
19 approximately 35 to 40 percent of your time in
20 California that they've met the criteria for civil
21 commitment?

22 A I think that's correct.

23 Q Does that mean you opine approximately 55 to 60
24 percent of the time --

25 A Yes.

1 Q -- that they didn't meet the criteria?

2 A Yes.

3 Q And you previously testified in Federal court
4 with regard to the 4248 law?

5 A No, I haven't. This is my first time.

6 Q And is there a reason that you are aware of that
7 most of your testimony has been for the government?

8 A Well, when -- I think it's because for the cases
9 in which I find the offender does not meet the criteria,
10 at least in California as a SVP, most of those cases do
11 not go forward to court, so I'm not called to testify
12 because there's no court proceeding.

13 Q Very good. Doctor Zinik, turning to a different
14 part of your resume there, what, if any, teaching or
15 presentation experience related to the topic of sex
16 offending do you have?

17 A Teaching and professional experience? Well, I
18 presented at some professional conferences, including
19 the ATSA conference, the Association for the Treatment
20 of Sexual Abusers. I presented last October at that
21 conference. I've also taught training and orientation to
22 law enforcement agencies related to sex offenders and
23 what we need to know about sex offenders. I have -- in
24 the past -- I used to live in Santa Barbara County and I
25 did a fair amount of training with -- there's a local

1 organization that provides treatment and supervision of
2 sex offenders.

3 I've worked with adolescents who have been
4 convicted, juvenile sex offenders who were in
5 residential treatment. I was a consulting psychologist
6 and provided treatment for those offenders, and I also
7 had some part-time jobs in years back teaching human
8 sexuality at the college level and various other forms
9 of teaching and training in human sexuality.

10 Q You mentioned that you're affiliated in some
11 capacity with ATSA as you phrased it. Are you a member
12 of that organization?

13 A I'm a member. I'm a clinical member of ATSA,
14 the Association for the Treatment of Sexual Abusers --
15 National and international Society of professional
16 researchers, clinicians, treatment providers, law
17 enforcement association who specialize in the area of
18 supervising and treating, studying sex offenders.

19 Q Are you a member of any other professional
20 organization pertaining to the topic of sex offending?

21 A I'm a member of California Coalition on Sex
22 Offenders, State organization.

23 Q Are you a member of the American
24 Psychological --

25 A Yes, I am.

1 Q Turn to the last page of your CV or resume. Is
2 it fair to say you attended numerous seminars and
3 training events?

4 A Yes. Since I joined the panel in California in
5 1996, I have participated regularly in training related
6 to sex offender evaluations and risk assessments. This
7 ATSA organization I mentioned, they have annual
8 conferences every year. I go to those, not every year,
9 but just about, and, you know, those are three or four
10 days conferences that present all the latest research
11 and information on sex offenders. And I've also been
12 fortunate to be at a -- as a member of the California
13 Department of Mental Health SVP panel, they provide us
14 with regular training a couple times a year and bring in
15 experts from around the country and around the world who
16 train us in the latest risk assessment techniques.

17 Q Are you familiar with the Federal civil
18 commitment law?

19 A Yes, I am.

20 Q How did you become familiar with that?

21 A I became familiar after I received a call from
22 Rudy Renfer. He got my name from another member on the
23 panel, Doctor Amy Phenix, and I was asked if I was
24 interested in doing this work and I accepted gratefully,
25 and so I studied the statute and began doing the

1 sexually dangerous person evaluations under 4247 in last
2 October, 2010.

3 Q And approximately how persons have you conducted
4 evaluations on other than Mr. King in this case?

5 A Yes, I have.

6 Q Approximately how many have you conducted?

7 A I think about 15.

8 Q Doctor Zinik, have you authored any publications
9 on the topic of sex offending in general?

10 A I do have a publication that's in press. It's a
11 book chapter that I wrote on the -- the topic is
12 paraphilic coercive disorder and the psychology of rape,
13 and it's going to be published in a book. I'm just not
14 sure when. Possibly by the end of this year or next
15 year.

16 Q How does that publication relate to risk
17 assessment or evaluation of --

18 A Well, I think it has some direct bearing. In
19 fact, it's related in many ways to this case because
20 paraphilic coercive disorder is a common diagnosis that
21 is used in sexually violent predator and sexually
22 dangerous person cases to identify these high risk
23 offenders who commit serial sex offenses against
24 multiple victims, sexual assaults typically involving
25 adolescent or adult victims that involves coercion and

1 violence.

2 And the term that is -- I don't know how -- I'm
3 sure at some point we'll discuss further the history of
4 the term paraphilic coercive disorder. It's not
5 currently a diagnosis listed in the Diagnostic and
6 Statistical Manual, but it is -- it's really synonymous
7 with the paraphilia NOS, nonconsent diagnosis that is
8 applicable in Mr. King's case, and this is, again, a
9 common diagnosis. You hear the term paraphilia NOS,
10 nonconsent, rape paraphilia, paraphilia forced sex with
11 nonconsenting victims, paraphilic coercive disorder.
12 These terms are synonymous and, again, they describe the
13 serial sex offender who is aroused by nonconsent of the
14 victim and the erotic response to the power and
15 dominance and control over the nonconsenting victim.

16 So this book chapter I wrote is a history of the
17 whole thing and all about, you know, how -- actually
18 been -- to the DSM manual a couple times and all the
19 politics around it is very interesting -- political hot
20 potato, so to speak. It has been for several decades. So
21 that's the subject of my book chapter.

22 Q Thank you.

23 A Could I add, if you don't mind, please, I have
24 conducted a research study on the nature of paraphilia
25 coercive disorder. It was a survey of experts around the

1 country who do sex offender evaluations and risk
2 assessments as well as treatment providers and so on. We
3 did an -- collection of respondents who -- and so I'm
4 working on compiling a checklist. It's kind of a
5 diagnostic checklist to identify this particular
6 paraphilic disorder and kind of standardize the
7 diagnostic criteria. That's a work in progress, however,
8 but it is also reviewed in the book chapter that I
9 wrote.

10 Q All right. Thank you, Doctor.

11 MR. LOCKRIDGE: Your Honor, at this time, we
12 would offer Doctor Zinik as an expert in forensic
13 psychology based upon his education, experience,
14 knowledge and skill and training in the field of
15 forensic psychology.

THE COURT: Any

16 objection, Mr. Bell?

MR. BELL: No

17 objection, Your Honor.

18 THE COURT: Doctor Zinik is so recognized.

19 MR. LOCKRIDGE: Thank you, Your Honor.

20 BY MR. LOCKRIDGE:

21 Q Doctor Zinik, were you asked by the United
22 States Attorney's office to evaluate the Respondent in
23 this case, Daniel King?

24 A Yes, I was.

25 Q What were you asked to do?

1 A I was asked to determine if he qualified as a
2 sexually dangerous person under Title 18 of US Code
3 4247.

4 Q And was that also as well as 4248?

5 A Yes.

6 Q And are you being paid for your evaluation?

7 A Yes.

8 Q And does your fee depend on you reaching a
9 particular conclusion?

10 A No, it does not.

11 Q Generally what materials did you rely on in your
12 evaluation of Mr. King?

13 A Well, I was sent a disk of records that
14 contained approximately 2,000 pages of discovery.
15 I reviewed all that material and then I wrote my
16 initial report, and after that, I was told I could
17 interview Mr. King, so I went to the Federal Corrections
18 Institute at Butner and interviewed him and then wrote
19 that additional material and wrote an update report
20 after that.

21 Q Can you just broadly explain the type of
22 materials that you reviewed as part of your evaluation?

23 A Sure. The materials were voluminous. They
24 included original -- some original criminal records,
25 police reports, victim reports and so on, charging

1 documents, court records, transcripts from his original
2 offense as well as the court proceeding. There were a
3 lot of clinical records from the treatment that he
4 participated in over the years. There were records from
5 his treatment within the Board of Prisons -- with the
6 Board of Prisons psychologists. There were disciplinary
7 records documenting all of his disciplinary violations.
8 There were a number of significant letters that were
9 written by Mr. King both to the Board of Prisons -- and
10 to his ex-wife, Marlene King. There were some e-mails
11 that were exchanged between the two of them. There were
12 some certificates of completion, you know, programs he
13 participated in in the prison. It was really a
14 collection of all of the documentation about his life
15 really since about 1974.

16 Q And is all the documents and evidence you have
17 reviewed in evaluating Mr. King the type upon which
18 other mental health professionals in your field commonly
19 rely on in evaluating persons to determine criteria for
20 meeting civil commitment?

21 A Yes.

22 Q And you mentioned that you interviewed Mr. King.

23 A Yes, I did.

24 Q And can you explain where that was, when that
25 happened?

1 A That was up at the prison at Butner in the
2 visiting room. We had a private room and -- sat across
3 the table and I brought my laptop computer with me and
4 took notes, and we interviewed for -- I think it was
5 about three and a half hours. The interview was August
6 1, 2011, three and three fourths hours.

7 Q Actually, Doctor Zinik, can you refer to Exhibit
8 57 in the white binder in front of you? Would referring
9 to that document on page one refresh your recollection
10 as to the date you interviewed Mr. King?

11 A Yes.

12 Q What was that date?

13 A August 1, 2011.

14 Q I ask you to look at the first paragraph there.

15 A Okay. I do see a little mistake, where Mr.

16 King's actually 53 years old, which I listed up above,
17 but in the first sentence, I said he was 52 years old.

18 Q Okay. I'm asking you about further down in the
19 first paragraph as to the interview date.

20 A About the interview date?

21 Q Right.

22 A Oh, I'm sorry. I was looking at the report date.
23 The interview date was July 26, 2011. I'm sorry.

24 Q And so you prepared a report of your evaluation
25 of Mr. King?

1 A Yes, I did.

2 Q And could you please turn to Government Exhibit
3 Five? Is that a forensic evaluation you conducted of Mr.
4 King under the --

5 A Yes.

6 Q What's the date of that report?

7 A October 1, 2010.

8 Q Within that report, did you render an opinion as
9 to whether Mr. King is a sexually dangerous person under
10 the statute?

11 A Yes, I did.

12 Q What is that opinion?

13 A It was my opinion that Mr. King did engage or
14 attempted to engage in sexually violent conduct or child
15 molestation and that he was sexually dangerous to others
16 because he suffers from a serious mental illness,
17 abnormality or disorder, and as a result of that mental
18 illness, he would have serious difficulty refraining
19 from sexually violent conduct or child molestation if
20 released.

21 Q Was your opinion based upon a reasonable degree
22 of professional certainty?

23 A Yes, it was.

24 Q And you conducted a subsequent evaluation of him
25 as well, correct?

1 A Yes, I did.

2 Q Could you please turn to Government Exhibit 57
3 that you were looking at earlier? And is that the second
4 forensic evaluation you conducted on Mr. King?

5 A Yes, it is.

6 Q And the date of that report is August 1, 2011?

7 A Yes, it is.

8 Q Why did you complete a second evaluation of Mr.
9 King?

10 A Because I was given the opportunity to interview
11 Mr. King and I also was provided some new information,
12 you know, new discovery records.

13 Q Okay. And within that second report, did you
14 also render an opinion as to his sexual dangerousness
15 under 4248?

16 A Yes, I did.

17 Q Is that opinion the same as in your first
18 opinion?

19 A Yes, it is.

20 Q Was that opinion also based on a reasonable
21 degree of professional certainty?

22 A Yes, it was.

23 Q Earlier you stated -- is the phrase sexually
24 dangerous person, to your understanding, defined under
25 Federal law?

1 A Under -- yes, under the code.

2 Q Okay.

3 A Yes.

4 Q And did you use that definition in opining in
5 your reports?

6 A Yes, I did.

7 MR. LOCKRIDGE: Your Honor, may I approach the
8 easel? THE COURT: You may, sir.

9 BY MR. LOCKRIDGE:

10 Q Doctor Zinik, could you please look at the
11 demonstrative exhibit on the easel? Do you recognize
12 that?

13 A Yes, I do.

14 Q What do you recognize that as?

15 A That's the Adam Walsh Act, the sexually
16 dangerous person act, and it's the criteria for
17 meeting -- you know, for qualifying as a sexually
18 dangerous person.

19 Q And I believe you testified earlier that -- as
20 to the first bullet, could you just read that?

21 A The respondent has engaged in or attempted to
22 engage in sexually violent conduct or child molestation.

23 Q And your opinion was that he was --

24 A Yes, he has.

25 Q And could you read the second bullet, please?

1 A The respondent suffers from a serious mental
2 illness, abnormality or disorder.

3 Q And you testified that he has?

4 A Yes, I did.

5 Q And the third bullet, please?

6 A As a result of which, the respondent would have
7 serious difficulty in refraining from sexually violent
8 conduct or child molestation if released. And it is my
9 opinion that Mr. King meets that criteria.

10 Q What do you understand looking at the first
11 bullet up there -- and it's also on your screen in front
12 of you, I believe. What do you understand that -- the
13 term sexually violent conduct to mean?

14 A What I understand that to mean is that the
15 individual has committed acts either charged or
16 uncharged that involve sexually violent conduct, which,
17 you know, is -- according to the Federal regulations, I
18 understand is defined as a threatening force against an
19 individual to commit a sexual act or placing the victim
20 in fear that they will be -- that they or someone else
21 will be harmed as a result of a sexual act.

22 Q Did you consult those regulations in
23 determining -- in considering whether he had committed
24 sexually violent conduct?

25 A Yes, I did.

1 Q Doctor Zinik, could you please refer to Exhibit
2 56, which should be a document called Daniel King case
3 history? Is that in your binder?

4 A Yes.

5 Q Do you recognize what that is?

6 A Yes, I do.

7 Q What do you recognize that to be?

8 A That's a timeline that I made to outline Mr.
9 King's history.

10 Q And is the -- looks to be three pages long, is
11 that correct?

12 A Yes.

13 Q And is the information in Exhibit 56 in that
14 case history some of the facts upon which you base your
15 testimony today?

16 A Yes.

17 Q Is that information and type reasonably relied
18 upon by experts in your field?

19 A Yes.

20 Q And does it appear accurate?

21 A Yes.

22 MR. LOCKRIDGE: Your Honor, may I approach the
23 easel? THE COURT: You may, sir.

24 BY MR. LOCKRIDGE:

25 Q Finally, Doctor Zinik, would referring you to a

1 blown up version of that exhibit assist you in your
2 testimony today?

3 A Yes, yes.

4 Q Without getting into the details of that
5 chart -- and I believe it's just the first page of the
6 chart there or the case history. Could you just explain
7 the color coding and flow of how the chart works?

8 A Okay. Well, the key's at the top, so the red
9 squares identify -- it's a timeline, and it's a vertical
10 timeline and it moves from top to bottom in terms of the
11 past to -- up to the present, and the color coding is
12 such that the red squares identify arrests for sexual --
13 for attempted or actual sexual offenses.

14 The green identifies statements that were made
15 by Mr. King to treatment providers or clinicians or
16 prison staff. The blue identifies statements that were
17 actually made by Mr. King in his own letters. I think
18 there's also a letter from his ex-wife, Marlene King, in
19 blue. And then the yellow is just other notable dates.

20 Q Could you just start there at the top yellow
21 box and explain -- actually, as part of your evaluation,
22 did you review Mr. King's upbringing and early history?

23 A Yes, I did.

24 Q Could you, starting from the top of that box,
25 explain his early childhood history?

1 A Okay. Well, Mr. King, unfortunately, had a
2 really troubled childhood, and he was adopted. It was
3 either around a year and a half or age two. He did
4 suffer from multiple disabilities as a child. He had a
5 hearing impairment, a serious hearing impairment. He had
6 a speech problem, a stuttering problem. When he became a
7 preteen around 10 or 11 years old, he began to develop
8 club feet and developed a physical disability as a
9 result of that which was an impairment in terms of his
10 ability to do athletics and things like that. He had
11 multiple surgeries on his feet during his preteen and
12 adolescent years, so he was in the hospital a lot,
13 disabled and in pain and recovering from multiple
14 surgeries.

15 He also was born with two what are called
16 supramammary nipples, so he had some extra nipples on
17 his chest. I think that caused embarrassment when he was
18 unclothed.

19 THE WITNESS: And the reason I think these are
20 important, Your Honor, is because he really did struggle
21 as a kid and he felt different. He was teased and
22 ridiculed and ostracized by his peers, and the result of
23 that was he became very angry as a kid and he started to
24 act out, get in trouble as early as 12 years old, and
25 this is well-documented in his early records. And so

1 this troubled childhood, I think, psychologically
2 contributed to his antisocial personality style and his
3 criminality and his tendencies which in some respects
4 later manifested themselves as a compulsion to sexually
5 assault women.

6 A He developed a -- he had -- let's see. He
7 developed a hostility toward women that was described by
8 his mother in some of the early records. He really had a
9 difficult relationship with his mother. She felt
10 threatened by him. Sometimes she would lock him out of
11 the house in order to protect herself. She talked about
12 how he seemed to get angry at her at things that would
13 not have bothered him had his father done them. And you
14 see throughout his treatment record and his prison
15 record, you know, subsequent references to hostility and
16 anger towards women.

17 Q Did you review any information pertaining to his
18 sexual habits as a child?

19 A Yes, I did.

20 Q What was the information you gleaned from that
21 review?

22 A What the early records show is that Mr. King
23 began to sexually expose himself when he was around 12
24 years old. He did get arrested twice we know when he was
25 approximately 14, and he -- I'm sorry, 15. This was in

1 1974. He was 15. But the exposure began apparently
2 around age 12. He was sent to therapists and doctors for
3 treatment. He had a problem with making obscene phone
4 calls.

5 His parents were very involved and caring and
6 concerned parents. They did send him -- you know, they
7 tried to get him help. You know, they used their
8 resources to try to help him when he was a kid, but,
9 like I say, he got arrested for the first -- well, twice
10 we know, once I think in April of '74 and then again
11 about -- and then he was -- this was for sexual
12 exposure. And then he was sent for a mental health
13 evaluation.

14 Then approximately a month later, he got
15 arrested the second time for sexually exposing himself
16 to two little girls and asking them to touch his penis,
17 although they refused to do so and they went and
18 reported it.

19 Q Before we get to that, you mentioned he was in
20 trouble for obscene phone calls. What, if any,
21 information did you learn about the obscene phone calls?

22 A I don't remember a lot of detail about that, I'm
23 afraid. I just -- as I recall, that was a reference in
24 his early records that was just one of many of the
25 behaviors that he was involved in that was causing

1 trouble.

2 Q All right. Going down there to the first red
3 box, you mentioned the indecent exposure. Could you
4 please explain the details, what you know about that?

5 A Okay. Well, as I was saying, he -- approximately
6 at age 12, he began to sexually expose himself. You
7 know, I think what we know what that is. He would open
8 his pants and show his penis to strangers, nonconsenting
9 individuals.

10 I know that when he was arrested the second time
11 at age 15, the victims that he exposed himself to were
12 two little girls, age seven and eight. I don't know who
13 the other individuals were that he exposed -- them to,
14 whether they were male or female or who they were, but
15 then when he was arrested the second time, this actually
16 occurred at his school. The police went to his school to
17 pick him up and the school secretary reported that there
18 were other reports of Mr. King exposing himself in other
19 instances. So this was already a chronic problem by the
20 time he was 14, 15 years old.

21 Q Just going back to -- with regard to the two
22 girls you mentioned, do you know what the setting was,
23 where that occurred?

24 A It occurred outside town apparently in a creek
25 bed, and the little girls were fishing and Mr. King

1 approached them and exposed himself and asked them if
2 they would touch penis. The girls reported that he was
3 rubbing his penis and he did have an erection. They
4 didn't touch him, and they went and told their mother,
5 and then he was later identified in a lineup as the
6 person who had asked them to do that.

7 Q All right. Did you render an opinion as to
8 whether that conduct in 1974 regarding those two girls
9 constitute sexually violent conduct?

10 A Yes. I believe it did. I think it certainly did,
11 because he was trying to get these girls to touch his
12 penis, and that would be an act of child molestation.

13 THE COURT: Doctor Zinik, I want to make sure
14 I understand correctly. There were two separate episodes
15 of this in 1974, is that correct?

16 THE WITNESS: Yes, Your Honor. If I can just
17 refer to my report -- and by the way, we don't have
18 the -- at least I have not seen the juvenile criminal
19 rap sheet, so to speak, of Mr. King's juvenile history,
20 so some of this information comes from later records
21 that was in the presentence investigation report from
22 1998 and clinical records that occurred in the mid
23 1970s, but it appears that he was arrested twice. The
24 first time was April 18, 1974, but I don't have any
25 details of that incident.

1 After that, he was sent to Northern Virginia
2 Mental Health Clinic in Fairfax for an evaluation, and
3 then a second arrest occurred on May 21, 1974, and that
4 is the one that we actually have the Fairfax County
5 police report describing the details of how he
6 encountered these two little girls, seven and eight
7 years old who were fishing in a creek bed and exposed
8 himself and asked them to touch him. And he was
9 convicted of two counts of sexual exposure. Now, whether
10 the two counts applied to the two girls in that same
11 incident or the two separate arrests, I don't know,
12 actually, what the two counts applied to.

13 THE COURT: So in this exhibit, Government's
14 Exhibit 56, when it says arrested for indecent exposure
15 to two girls age seven and eight, that's a reference to
16 the May 21, 1974 incident, is that correct?

17 THE WITNESS: Yes, yes.

18 BY MR. LOCKRIDGE:

19 Q Doctor Zinik, could you refer to Government
20 Exhibit Seven? It's also on your screen there. It should
21 be on your screen in front of you.

22 A Okay.

23 Q What do you recognize that to be?

24 A That is the police report documenting this
25 arrest on May 21, 1974.

1 Q And is that the event you were talking about
2 regarding the two girls age seven and eight?

3 A Yes, it is.

4 Q And as you mentioned, the date of that is May
5 21, 1974?

6 A Yes.

7 Q Could you please turn to Exhibit Number 23? And
8 I believe that's Bates number at the bottom -- should be
9 page three, but it's the page following page three,
10 Exhibit -- Bates number 1956.

11 A Exhibit --

12 Q It sudden be Exhibit 23.

13 A Twenty-three, okay.

14 Q And I believe that's on your screen.

15 A Yes, the presentence investigation report. Okay.

16

17 Q And if you could look under the juvenile section
18 there, --

19 A Okay.

20 Q -- are those the two -- the indecent exposure
21 two counts that you were referring to earlier?

22 A Yes.

23 Q And as a result of those two counts, what, if
24 any, adjudication did Mr. King receive?

25 A He was -- let's see. He was convicted. He was

1 placed on unofficial probation for two years and he was
2 enrolled in a sex offender treatment program.

3 Q And is the date discrepancy on that page April
4 18, '74 -- that's different from the date you mentioned
5 on Exhibit Seven, correct?

6 A Yes, you're right. It is different.

7 Q Okay. So is that part of the confusion why there
8 might be two different instances?

9 A Yes, yes.

10 Q Continuing on with the case history up on the
11 board, the first box with the 1975 date in it, what is
12 that referring to?

13 A That's an incident in which Mr. King -- he was
14 16 years old and he reported to a later -- in a later
15 evaluation -- was actually my understanding that he
16 reported this to Doctor Graney, Dawn Graney in her
17 evaluation in 2009 -- that was where I found that
18 information -- that he was assaulted by a group of
19 teenage boys after he was caught exposing himself.

20 THE WITNESS: And if I can add, Your Honor, he
21 was -- they hit him on the head. It resulted in a
22 serious head injury. He was in the hospital and in a
23 coma for, I think, a few weeks and he had to have a
24 shunt surgically installed in his head to drain the
25 swelling and so on, and it was quite a serious injury.

1 Q All right. Continuing on with the next red
2 block there --

3 A Okay. So this -- this is his second arrest. This
4 was in -- April 15, 1974 and -- oh, I'm sorry. I'm on
5 the wrong blocks here. Okay. October 9, 1975, this is
6 his second arrest, and this involved abducting a 19 year
7 old female at knifepoint, exposing his penis and forcing
8 her to touch it. He also fondled her breasts and he was
9 convicted of seizing, transporting and detaining with
10 the intent to defile a person.

11 Q What are the circumstances surrounding that
12 offense, to your knowledge?

13 A Okay. And, again, for this offense, we do have
14 the original police report, and according to the
15 victim's account, she was walking after a football game,
16 a high school football game and Mr. King grabbed her
17 around the neck and held a knife to her and dragged her
18 into a car that drove up that was driven by another male
19 that was a friend of Mr. King.

20 Mr. King pulled the victim into the back seat of
21 the car and told the driver to start moving, and then
22 Mr. King, he kept his -- he held the victim by the
23 throat and I fondled her breasts. He tried to tear off
24 her blouse but wasn't able to, so he put his hand under
25 her shirt and then he opened his pants and he pulled out

1 his penis and grabbed the victim's hand and made her
2 touch it, and she did pull her hand away immediately.

3 And the victim described how the driver of the
4 vehicle kept telling Mr. King to let the victim alone
5 and argued with Mr. King that he should release the
6 victim, and, you know, eventually Mr. King agreed and
7 they stopped the car and they put the victim out of the
8 car. And the victim reports that she felt that the male
9 driver was really -- she appreciated the fact that he
10 appeared to prevent her from further harm by Mr. King by
11 persuading Mr. King to release her and let her out of
12 the car. She states that she did not believe the male
13 driver committed a crime against her and, in fact,
14 protected her from further harm.

15 Q You indicated that he was convicted for that
16 offense, and does the part of the statutory name
17 of that offense -- the intent to defile her person, does
18 that have any significance to you?

19 A I think it does. It certainly sounds like a
20 sexual offense based on the wording of the conviction.

21 MR. BELL: Objection, Your Honor. He's asking
22 him for a legal conclusion.

23 THE COURT: Please rise, Mr. Bell, when
24 addressing The Court.

25 MR. BELL: I'm sorry. Objection, Your Honor.

1 He's asking for a conclusion regarding statutory
2 language. I don't believe he's been qualified as an
3 expert in that regard.

4 THE COURT: I'll allow him to testify as to
5 the significance that he's giving it, but I share the
6 view of Mr. Bell, that this witness is not qualified
7 as a legal expert, but to the extent that he's given
8 that term -- interpretation, I think The Court needs to
9 know that. The objection is overruled. Mr. Lockridge?

10 BY MR. LOCKRIDGE:

11 Q Doctor Zinik, upon that conviction, do you
12 recall what punishment, if any, Mr. King received?

13 A Let's see. He was sentenced to indeterminate
14 probation to age 18 and he was also sent to a --
15 required to go to sex offender treatment. He was
16 originally sent to Westbrook Hospital in Richmond,
17 Virginia, but he was discharged in December, 1975 and
18 described as unmanageable and he was removed due to
19 alleged sexual activity with a female patient.

20 He was returned to jail for a period of time and
21 then he was sent to the Phipps Clinic at Johns Hopkins
22 Hospital, a residential treatment program, and he was
23 there for six months.

24 Q All right. Doctor Zinik, I'd like to refer you
25 back to Exhibit 23, and that would be page three of

1 Bates stamp 1956. We're going to try to pull it up for
2 you real quick. Again, going -- looking down to the
3 juvenile history, do you see the conviction there for
4 seize, transport and detain with intent to defile?

5 A Yes, I do.

6 Q What does that say there next to that about the
7 adjudication he received?

8 A Indeterminate probation not to exceed subject's
9 21st birthday. Oh, I think I said it was his 18th
10 birthday, so I was mistaken there. It was his 21st
11 birthday.

12 Q Okay. As a result of that, you said he was
13 treated at Westbrook Hospital is what you'd indicated?

14 A Yes.

15 Q And following that, he was treated at Phipps
16 Psychiatric Clinic?

17 A Yes.

18 Q What information and details do you have about
19 that treatment, if any?

20 A There's actually some original treatment records
21 from the Phipps Clinic from 1976, so some helpful
22 records that are quite detailed about the fact that --
23 let's see if I can just refer to my report, please --
24 where Mr. King reported that since age 13, his sexual
25 fantasies have mainly concerned exposing himself. This

1 is a quote. He fantasizes about exposing himself or
2 about tying women up and raping them. He described
3 himself as manipulative and able to get away with
4 anything.

5 So this is significant to me because here we
6 have, you know, an admission by Mr. King at age 17 that
7 he's got these compelling sexual thoughts to expose
8 himself and sexual fantasies about tying women up and
9 raping them and that he was preoccupied with those
10 sexual thoughts and urges as young as age 17.

11 Q Who did he make those disclosures to?

12 A He makes those to his treatment provider at the
13 Phipps Clinic. I'm not sure exactly who the person was
14 that he exposed them to. I know he was -- one of his
15 providers -- I mean, excuse me, I'm not sure who the
16 provider was that he said those statements to. I know
17 one of his therapists was a psychiatrist named Doctor
18 Park Dietz, a famous forensic psychiatrist.

19 Q And continuing on --

20 MR. LOCKRIDGE: Your Honor, may I approach the
21 easel? THE COURT: You may, sir.

22 BY MR. LOCKRIDGE:

23 Q Looking at the top of that red box there,
24 there's a date of 1978. Could you please explain what
25 happened or the significance of that box?

1 A This is when Mr. King was arrested for his third
2 offense which I think was probably a sexually motivated
3 offense, although we don't have many details about it.
4 There were records on microfilm apparently, but the
5 machine was not available at the time. The microfilm
6 machine was broken at the time the discovery was
7 collected, so we weren't able to find out what the
8 details of the offense were. All we have are some
9 reports by Mr. King describing that he -- apparently
10 there were two victims involved, and these were two
11 separate incidents that occurred on the same day in
12 which he attempted to abduct a first victim, she got
13 away, and, therefore, he abducted a second victim a
14 short time later. And again in later records, Mr. King
15 refers back to this offense and describes it as a
16 sexually motivated offense.

17 THE WITNESS: And what's significant about the
18 timeline, Your Honor, is just how quickly in my opinion
19 Mr. King reoffends. There was less than -- about 21
20 months between the conviction for his prior offense in
21 1975 which was the second sex offense and then this
22 third one that occurred in April of '78.

23 BY MR. LOCKRIDGE:

24 Q Doctor Zinik, earlier you testified that he was
25 on probation until age 21.

1 A Correct.

2 Q And would this offense have occurred based on
3 your review of the records while he was still on
4 probation?

5 A Correct, yes.

6 Q What, if any, punishment did he receive for this
7 offense -- well, he was convicted. He did receive a
8 conviction, correct?

9 A He was convicted of one of the charges. Let's
10 see. He was convicted of -- consult my original report
11 to determine which charge he was convicted on. Let's
12 see. He was convicted of count one, which was, I think,
13 attempted abducting -- attempted abduction was my
14 understanding was the count that he was -- wait. I'm
15 sorry. I'm a bit confused. I don't know which count he
16 was convicted on.

17 Q Can I refer you to Exhibit Ten, please?

18 A Okay.

19 Q And what's the date of that top sentence there?

20 A Date November, 19 -- November 8, 1978.

21 Q All right.

22 A And it looks like he was convicted of abduction.

23 Q Okay. And do you see any sentence he might have
24 received on that page there?

25 THE COURT: Which exhibit are we looking at?

1 MR. LOCKRIDGE: Exhibit Ten, Your Honor. That
2 would be a criminal judgment from 1978, Your Honor.

3 BY MR. LOCKRIDGE:

4 Q And if you can look at page two of Exhibit Ten,
5 Doctor Zinik--,

6 A Yes.

7 Q -- what was the remainder of his sentence that
8 he incurred?

9 A Let's see. Five years were suspended.

10 Q And did he receive any probation?

11 A He was placed on probation and his probation was
12 revoked April 4, 1979 and he returned to prison for five
13 years.

14 Q All right. So to your knowledge, he was in
15 prison after the conviction of 1978 for a five year
16 sentence?

17 A Yes.

18 Q All right. And turning -- do you have any
19 details as to why his probation was revoked in 1979?

20 A No, I don't. I don't know why.

21 Q Referring you to the next box there, 1983, could
22 you please explain what that means, what that is?

23 A This was for his fourth arrest, and this
24 occurred November 23, 1983. You know, I'm just realizing
25 that it looks like the period of time that he was in the

1 community is missing from the chart. You know, there was
2 a period of time after the conviction in 1978 that he
3 went to prison and then he got out. I'm not exactly sure
4 when he was paroled. I thought it was sometime in 1982
5 or '83. Mr. King has reported that he was paroled
6 December 29, 1980, so, you know, it's possible it was in
7 late 1980 or 1981 or so.

8 But then he's arrested again November 23, 1983,
9 and this case involved another assault and the -- he
10 approached a woman who was walking to her car. He asked
11 the woman if she would -- let's see -- if she would walk
12 him to his car so he wouldn't be arrested because he was
13 drunk, and the victim refused and she continued to walk
14 to her car, and he then approached her and said --
15 pushed her in her car and said don't scream or I'll kill
16 you, but she fought him off. She kicked him in the groin
17 and she screamed and then he fled in his car, and the
18 police were summoned and he was arrested 20 minutes
19 later.

20 Q All right. Was there any evidence collected at
21 the scene of that offense?

22 A There was. And this offense is particularly
23 significant because Mr. King was in possession of items
24 that he later described as a rape kit. At the time he
25 was arrested, he was wearing a green jacket, and in the

1 pocket of the jacket was a pair of handcuffs, and later
2 when his car was searched, an air pistol was found on
3 the front seat and there were various lengths of ropes
4 and straps that could be used for bindings, and, in
5 fact, one of the ropes was looped through the seat belt
6 anchor, and there was also an axe handle with long nails
7 taped to the end of it that were sticking out, and so
8 these looked like implements that he could use in an
9 assault in a sexual offense. And, in fact, later on, he
10 testified again in the precertification report to Doctor
11 Dawn Graney in 2009 that, in fact, these were rape kit
12 items that he frequently used during sexual assaults.

13 Q Doctor Zinik, are you aware of whether or not
14 Mr. King actually possessed the handcuffs during this
15 offense?

16 A Well, you know, it's very clear from the -- we
17 have the original police records, and at the time he was
18 arrested, the police report notes that he was wearing
19 this green jacket and in the pocket of the jacket were
20 the handcuffs, and that's actually cross-referenced in a
21 couple places in the police report.

22 Q I'll refer you to Exhibit 13, Doctor Zinik. It
23 should be on your screen there.

24 A Yes.

25 Q Is there any information on that exhibit that

1 leads you to find that he possessed those handcuffs
2 during that crime?

3 A Yes.

4 Q What is that?

5 A There's a list of the property recovered and the
6 items of evidence, and number two in that list is one
7 pair of handcuffs found in the right front jacket
8 pocket, and where it says -- then there's a column that
9 says from whom or, you know, where the evidence was
10 located, and the other items of evidence were identified
11 in the defendant's automobile, but the handcuffs were
12 identified to be on the defendant himself.

13 Q Okay. Turning to the next page of that exhibit,
14 is there any information on that page that led to your
15 opinion that he possessed those handcuffs?

16 A Let's see. There are --

17 Q Let me strike that. Was there any information on
18 that page that he was wearing a green jacket at the time
19 he was apprehended?

20 A I know there is because I've seen it, but I
21 highlighted in my own notes -- let's see. Thank you for
22 helping me here. Let's see. Gave -- he was wearing --
23 the description of the defendant wearing a red hat and a
24 green jacket was given by the victim.

25 Q Okay. And further down there, any other evidence

1 about that jacket and the handcuffs?

2 A It says lying on the front passenger seat was
3 one Crosman air pistol.

4 Q Prior to that, I'm sorry. The sentence before
5 that, what's that say?

6 A Oh. The victim was riding with the police and
7 they spotted Mr. King. She yelled it's him, and before
8 the defendant had gotten out of his vehicle, the
9 defendant was wearing a red knit hat and a green jacket,
10 and then later on, they found the other items in the
11 car.

12 Q What's it say with regard to recovered from that
13 jacket?

14 A Oh. Recovered from the front jacket pocket was
15 one pair of handcuffs.

16 Q And were you able to --

17 THE COURT: Mr. Lockridge, let me interject
18 here. Throughout this little bit of testimony as Counsel
19 has made inquiries in this exhibit as to where
20 particular information is, I believe Co-counsel for the
21 examining counsel -- I'm assuming that's you, Mr. Gray,
22 but -- underlining the key words here. I have no
23 objection to that being done as long as it's disclosed
24 on the record, but I would request if that procedure is
25 being used that it be stated on the record.

1 MR. LOCKRIDGE: My apologies. We'll do that.

2 THE COURT: Were you aware of that, Mr. Bell?

3 MR. BELL: I was looking at my own computer,
4 Your Honor. I didn't realize it was being done, but I
5 think it's fine as long as I have an opportunity to do
6 the same thing on cross-examination, which I'm sure The
7 Court will allow.

8 THE COURT: Well, is the blue lining that's
9 showing up on the screen that I have, is that not
10 appearing on the screen --

11 MR. BELL: It's appearing on the large screen,
12 Your Honor, but I just have the document on my computer
13 and I was looking at it -- the same document. I didn't
14 happen to notice it, but I'll look at the big screen so
15 I can notice what's going on.

16 THE COURT: Well, I just want to be sure that
17 you're aware of it. I think otherwise -- without some
18 disclosure, I'm concerned that it may give perhaps a
19 potential misimpression as to the witness's testimony.
20 Very good. Mr. Lockridge?

21 MR. LOCKRIDGE: Thank you, Your Honor. We'll
22 make that change and make sure that happens -- The
23 Court's decision.

24 THE COURT: That will be fine. Thank you.

25 BY MR. LOCKRIDGE:

1 Q Doctor Zinik, staying with that 1983 offense,
2 was he convicted of that offense?

3 A Yes, he was.

4 Q And was there any information you received
5 regarding Mr. King's statement about the circumstances
6 of that offense?

7 A When I interviewed Mr. King, he told a very
8 different story about that offense. He claims that his
9 motivation was to rob the victim, that it wasn't a
10 sexually motivated offense. In fact, Mr. King has
11 recanted, you know, prior -- many, you know, prior
12 admissions he made that his offenses were sexually
13 motivated and now he's claiming that none of these
14 offenses were sexually motivated, including this one.

15 He claims that he was attempting to rob the victim,
16 although there's no reference about asking the victim
17 for money. You know, the victim doesn't report anything
18 said by Mr. King that would indicate he wanted money or
19 he was trying to rob the victim. And Mr. King claimed
20 that the handcuffs were toy handcuffs, that they weren't
21 his handcuffs. He does say that they were in the jacket
22 pocket, but he claims the jacket was not his and he was
23 not wearing the jacket and the jacket was found on the
24 seat of the car after he was arrested, but we know that
25 that wasn't the case. The facts are clear that he was

1 wearing the green jacket when he was arrested and that
2 it did contain a pair of handcuffs, and there's nothing
3 in the police report that would suggest they weren't
4 real handcuffs. There's no mention that they were toy
5 handcuffs.

6 Q Doctor Zinik, do you have any information as to
7 whether Mr. King was on any type of supervision while he
8 committed this offense?

9 A He would have been under probation, community
10 supervision when he committed this offense.

11 Q I'd like to refer you there to the screen again
12 to Exhibit 13 and down to the bottom part there. Does
13 that inform your opinion?

14 A Yes. It says the defendant was on parole in
15 Fairfax City, Virginia for abduction until 1983.

16 Q And based upon your review of this offense,
17 Doctor Zinik, did you render an opinion as to whether
18 that conduct was sexually violent conduct or child
19 molestation?

20 A I did, yes.

21 Q What was that opinion?

22 A Well, because I think Mr. King reported a prior
23 occasion that this was a rape kit and particularly when
24 he was arrested in 1988 for his final fifth sex offense,
25 he referred back to these earlier offenses and said that

1 I know what my intent was, my intent was for a sexual
2 assault, and he actually gave a very detailed
3 description of his paraphilia and the kind of sexual
4 assaults that he commits to doctor Dawn Graney in 2009.

5 And I think this is also significant because this
6 is the second time he sexually reoffended while on
7 probation or parole, so I think that issue speaks to the
8 serious lack of control over committing sexually violent
9 behavior or what we call volitional impairment. I mean,
10 here he was being supervised. He was under probation or
11 parole. He was being watched and yet there was something
12 driving him to do this behavior again. It was very
13 compelling and he reoffends quite quickly, and these are
14 all important when it comes to the diagnosis and the
15 risk assessment issue.

16 Q Doctor Zinik, with regard to that conviction, do
17 you recall what his original charges were?

18 A Let's see. He was charged with -- dangerous
19 weapon and assault with intent to kidnap while armed.

20 Q Thank you, Doctor Zinik. Do you recall how
21 much -- what punishment, if any, he received as a result
22 of that conviction?

23 A Yes. He was convicted in February, 1985. He
24 pled to simple assault. He received a year in jail and
25 was -- let's see. He was also convicted of assault with

1 attempt to kidnap while armed, and he -- his final
2 sentence was two to eight years.

3 Q Doctor Zinik, let me refer you back to Exhibit
4 14. Could you look there in your binder at Exhibit 14?

5 A Okay. Do you want me to find it in the binder?

6 Q Yes, if you don't mind.

7 A Okay.

8 Q What does that indicate that he was convicted of
9 on that judgment?

10 A He was convicted of carrying a dangerous weapon
11 and assault.

12 Q All right. Earlier you stated he was convicted
13 of a kidnapping offense, but looking at this judgment,
14 you -- correct that?

15 A Yes.

16 Q All right. Following that, there's a yellow box
17 under that. Can you please explain what that is?

18 A That's the period of time that Mr. King was in
19 the community, so he was actually paroled September 3,
20 1987 and he reoffended February 19, 1988, so that's
21 approximately five and a half months later he committed
22 his fifth crime which I interpret to be a sexually
23 motivated crime. He was out in the community only five
24 and a half months. He was still on parole, and he was
25 arrested February 19, 1988.

1 Q What were the circumstances, if you know, of
2 that offense?

3 A This was another assault at knifepoint in which
4 he attacked a female stranger and he held her. He led
5 her across the street at knifepoint towards -- car.
6 He -- apparently he was then interrupted by a witness
7 and the victim was able to flee and escape.

8 Q Were there an -- official records to your
9 knowledge in which Mr. King made a statement regarding
10 that offense?

11 A Yes. Well, this is the one that we have the
12 presentence report for, the 1988 report, and it was in
13 that report that he stated that I know what my intent
14 was, it was to commit a sexual assault, and he actually
15 went into some detail about the fact that this was a
16 sexually motivated crime.

17 Q And let me refer you to Exhibit 23 if I can get
18 that up.

19 A Is it all right if I look that up in my own
20 binder?

21 Q Sure.

22 A Okay.

23 Q If you can refer to your screen, what document
24 do you recognize that to be? I pulled up Exhibit 23
25 there, page three.

1 A This the 1988 presentence report.

2 Q And the top of that page, what do you see up
3 there?

4 A It says defendant's version.

5 Q And will that refresh your recollection as to
6 what statement he provided to officials?

7 A Yes. This was a quote from Mr. King where he
8 describes -- he says I walked up behind the victim, put
9 a knife to her head, attempted to take her to my
10 vehicle. I was attempting to push her into the vehicle,
11 but she broke away from me. That's all that happened.
12 Man, I wish I could tell you I know what my intentions
13 were for a sexual assault. I wasn't able to control what
14 I was doing. I wasn't intoxicated and I don't use drugs.
15 Every crime I committed, I don't recall why I was there
16 at that particular point. I don't blame them. I don't
17 think about them before I do it. The impulses are so
18 strong, I attempted to get help for them. It's been
19 happening since 1975.

20 Q What, if any, significance did that statement
21 have to you?

22 A I think this is an important statement because
23 it is more of a paper trail, you might say, of the
24 admissions made by Mr. King -- started back in 1976 when
25 he was at the Phipps Clinic. We've already referred to

1 that where he talked about having fantasies of tying up
2 victims and raping them. Here we have an admission that
3 he's saying that this crime he committed in 1988 was a
4 sexually motivated crime and his intent was a sexual
5 assault. And he's also talking about how the impulses
6 were so strong, I couldn't control them.

7 This, again, is the exact language that you
8 would be looking for if you wanted to demonstrate a
9 serious difficulty refraining from committing sexually
10 violent behavior. This speaks directly to the volitional
11 impairment in which -- which I think reflects the
12 underlying paraphilia, the sexual disorder that Mr. King
13 has, that he is sexually aroused to force sex with
14 nonconsenting victims and this is a very compelling
15 thing that drives him to commit these crimes and he
16 feels out of control and he's doing it -- even though he
17 just got out of prison five and a half months ago for
18 the same kind of thing, he's doing it again. He can't
19 control himself.

20 Q Doctor Zinik, as a result of that conviction,
21 are you aware of what punishment, if any, he received?

22 A Yes. He -- sorry. I'm referring to my notes
23 here. Let's see. He was convicted by -- plea of armed
24 kidnapping and he was sentenced to 12 to 36 years in
25 prison.

1 Q Doctor Zinik, did you render an opinion as to
2 whether this offense constituted sexually violent
3 conduct?

4 A Yes. I believe it did.

5 Q And referring down to the next block on case
6 history, Doctor Zinik, dated June 7, 1988, --

7 A Yes.

8 Q -- what's the significance of that?

9 A This is the blue box. This is a statement that
10 Mr. King made in a letter that he wrote to the judge at
11 this time of the adjudication of this offense, and so
12 this is a handwritten letter that we have in the
13 discovery dated June 7, 1988 in which he said "I'm tired
14 of dealing with the mental problem that takes over my
15 whole being. Worst of all, my whole life has been
16 destroyed and controlled by my mental problems."

17 Q Just for clarity, under the date there, June 7,
18 1988, that next -- 22, is that Exhibit 22?

19 A Yes.

20 Q Continuing on that timeline --

21 A The next entry is a green box dated November 5,
22 1991, and this was a statement that was found in the
23 Board of Prisons therapy notes, the psychology treatment
24 notes in which it says "says his frustration with his
25 ex-wife would accumulate and finally be released as

1 impulsive abductions with rape intent. Admits that such
2 episodes were expressions of his need to regain and
3 exert control."

4 Q When it refers to the ex-wife, do you have any
5 information as to what they are talking about there?

6 A Yes. I'm assuming this refers to his second
7 wife, Marlene. Mr. King has been married twice, and, you
8 know, the first time -- they were both rather short
9 marriages. I think the first one occurred in 1982 and
10 then the second one occurred -- let's see. He was
11 married February 14, 1987. This was -- I think this was
12 in prison. I think he was actually married while he was
13 in prison, but he had met Marlene prior to being
14 incarcerated.

15 And what was significant in the records, his
16 parents actually talked about -- and both -- Marlene
17 King, they were both -- they both had statements in the
18 1988 presentence report about how Mr. King seemed to be
19 doing really well. He was newly married. He was
20 expecting his first child, so he had a consenting sexual
21 partner available to him. He was newly married -- in
22 fact, twice when he reoffended he was newly married and
23 had a consenting sexual partner, and yet he continued to
24 commit these sexually violent crimes.

25 In the 1988 case, he had a job. He was working.

1 He was steadily employed. He seemed to be doing well.
2 His parents remarked about -- how the fact that he
3 seemed to have his life together and everything seemed
4 to be going really well, and then here he did it again,
5 so I think that's significant.

6 Q At the bottom of that chart there, the 1993
7 date, what significance, if any, does that have?

8 A Okay. That's an important event because Mr. King
9 was in prison and he received a rule infraction or a
10 disciplinary violation on April 9, 1993, and this
11 occurred when he was in a counseling session with a
12 female therapist and the session was actually being
13 taped or being tape recorded. Now, I don't know if that
14 was video or audiotape, but the records talk about the
15 session was being recorded.

16 And he was talking about his compulsion to
17 expose himself and have women touch his penis and he was
18 talking about that -- he got emotional. He started
19 crying, and then he asked that the tape be shut off, and
20 the therapist shut off the tape, and then after that he
21 asked the therapist if she would touch his penis, and so
22 he got violated for that. And I think that's significant
23 clinically, because it's an example of how the very act
24 of describing the sexual compulsion and talking about it
25 to in particular a female therapist sexually excited him

1 apparently and he was stimulated to the point where, you
2 know, he was talking about his problem and then he
3 actually asked the therapist if she would touch his
4 penis. I find that really significant.

5 Q During your interview with Mr. King, did you
6 discuss this incident?

7 A I did, yes.

8 Q What did he tell you about it?

9 A Mr. King denied that he asked the therapist to
10 touch his penis. He claimed that he and the female
11 therapist were in a relationship and that they had been
12 intimate together and kissing and hugging and that
13 apparently another inmate had observed this and that he
14 was concerned that his girlfriend, the therapist, would
15 get in trouble, so they agreed to manufacture this story
16 so that he would take the blame and she would get off
17 the hook. This was the story that Mr. King told me in
18 this interview, but he denies that he asked the
19 therapist to touch his penis.

20 Q Just for clarity, did you indicate that the
21 record showed whether or not he received discipline for
22 that?

23 A He did, yes.

24 MR. LOCKRIDGE: Your Honor, I've got one more
25 board, if I could approach the easel.

1 THE COURT: That would be fine.

2 BY MR. LOCKRIDGE:

3 Q And for clarify, with regard to Mr. King's
4 incarceration in 1988, how long was he incarcerated on
5 that offense?

6 A Let's see. I think he was sentenced up to 32
7 years, but he's been incarcerated since that time. He's
8 never been out in the community.

9 Q And referring to this last page of the case
10 history, I'd like to refer you to the top block that's
11 dated 1997. What, if any, significance does that block
12 have?

13 A This was from a report, a psychological
14 evaluation by Doctor Mauriz, M-A-U-R-I-Z, and this was a
15 statement that was quoted in that report that Mr. King
16 made where he was talking about the origin of his sexual
17 exposure compulsion and his impulses to sexually assault
18 women. He was talking about how as an adolescent he was
19 angry at girls and he described his anger toward females
20 and he said, you know, I like you, you don't like me,
21 take this and gestured toward his penis in a sense that
22 he would expose himself, and he said I was in control
23 and I liked it.

24 And during that evaluation, he admitted that
25 he's not always been able to control his indecent

1 exposure and my need to control completely and humiliate
2 other individuals through dominance.

3 Q Would this statement, to your knowledge, have
4 been made prior to the implementation of the Adam Walsh
5 Act?

6 A Yes, it was. You know, I mean, all the
7 statements he made up to this point were prior to the
8 Adam Walsh Act, and this is significant because Mr. King
9 has now recanted the fact that he's made statements in
10 the past suggesting that he has impulses to expose
11 himself, commit sexually violent crimes, and he has an
12 explanation for why he made those statements in 2009.
13 I don't know if you want me to discuss that now, but the
14 important thing is that there is a paper trail dating
15 back to 1976 where he was making statements in the '70s,
16 in the '80s, in the '90s, in the 2000s, long before the
17 Adam Walsh Act, long before he was facing release from
18 prison without support and fear that he might reoffend,
19 and so this, I think, is good documentation that he is
20 describing a sexual disorder that is, you know,
21 well-documented in the records.

22 Q With regard to the next block there dated 2000,
23 what significance, if any, does that block have?

24 A This is another statement made to a BOP
25 treatment provider, September 22, 2000, a psychology

1 consult note that says he has a history of
2 exhibitionism, aggressiveness, et cetera, "indicates
3 that when these thoughts enter his mind, he becomes
4 anxious, indicates problems since teen years and states
5 I have no remorse."

6 Q And continue on down there to the three blocks
7 dated 2009. Could you please explain those boxes?

8 A Okay. The first one is June 30, 2009. I think
9 this one actually should have been in blue now I'm
10 realizing because this is a quote from a letter that Mr.
11 King wrote himself, a handwritten letter, and he wrote
12 this letter to the Sex Offender Certification Review
13 Branch, and he was writing this letter because he was
14 expressing a desire to cooperate with the civil
15 commitment proceedings. He stated "having been
16 incarcerated for the amount of years that I have been, I
17 can only compare this to a hibernating bear who awakens
18 with the desire to eat, and eat he will. I have not
19 developed the ability to control myself."

20 And this is referring to his admission that he's
21 going to -- if he gets out, he's going to reoffend and
22 commit a new sexually violent crime, and he -- at the
23 time that he was making these statements -- and this is
24 flushed out later on in the precertification reports, he
25 was -- he claims that he was afraid to be released to

1 the community because he still had this sexual
2 compulsion. He was afraid to be out on his own. He
3 didn't have any resources. He didn't have any help. He
4 didn't have any funds, and he was concerned that he
5 would go back to drug abuse and that without any
6 support, it would just be a matter of time that he would
7 commit new sexual crimes, and he was afraid. He wanted
8 help, and he was -- this was a cry for help, saying I
9 will cooperate with the civil commitment proceeding
10 because I don't want to go out and do it again, because
11 I know I will.

12 Q Now, these admissions would have been made after
13 the implementation of the Adam Walsh Act, correct?

14 A Yes.

15 Q Did you discuss these admissions with Mr. King?

16 A Yes, I did.

17 Q What did he tell you about those?

18 A Mr. King has retracted these admissions. Mr.
19 King -- and as we go forward, you will see he gave a
20 very detailed explanation of his sexual compulsion to
21 Doctor Graney and he has retracted that. He's claiming
22 that he has never committed a sexually motivated crime
23 and he made this very dramatic about-face after he
24 received a letter from his ex-wife, Marlene King, whom
25 he hadn't heard from for about 20 years. As he put it,

1 she popped back into my life and she wrote him a letter
2 a letter that said, you know, I still love you and you
3 can come live with me when you get out.

4 You know, their son is an adult now. He has a
5 daughter, so Mr. King is a grandparent, and Mr. King
6 claims that now -- this is what he told me during his
7 interview, that now that he has someone who can help him
8 and support him and provide him a place to live and that
9 sort of thing when he's released, he's not afraid to get
10 out anymore. But these were all stories that he made up
11 and none of 'em are true, and he only made them up
12 because he was afraid to get out on his own, but now
13 that he's got some support in the community, he is
14 categorically recanting everything he said before.

15 Q All right. Thank you, Doctor. Now, is there any
16 other evidence that you considered that you wanted to
17 talk about as to whether he's engaged in sexually
18 violent conduct?

19 A Yes. I think the statements that he made to
20 Doctor Graney in her precertification report are very
21 important, and that report -- so he was interviewed by
22 Doctor Graney November 13, 2009, and she wrote a very
23 detailed report about the things he said. And he
24 essentially described this -- I mean, he described what
25 I would say is a textbook example of a paraphilia NOS,

1 nonconsent. He talked about how he had been having these
2 impulses to expose himself and sexually assault women
3 since he was a teenager. He admitted to committing
4 unreported sexually violent crimes.

5 He claimed the first time he abducted a female
6 was when he was 14 years old. He had a pocketknife and
7 he claims that he abducted another girl at knifepoint
8 and sexually exposed himself and made her masturbate
9 him. He described how his -- he described a very
10 ritualized MO or modus operandi, which is very
11 characteristic of a paraphilia. The more the behavior is
12 ritualized and scripted and repeated in a very specific
13 order and a specific fashion, the more likely it's going
14 to be a paraphilic type sexual disorder.

15 So what he described was that he would -- he
16 would pack up his rape kit and put it in his car, and
17 this is when he described the handcuffs and the ropes
18 and the -- you know, he would blindfold his victims.
19 He would have these items in his car. He described how
20 he had written index cards with instructions for the
21 victim because he -- because of his hearing impairment,
22 he felt that his voice was distinctive and that the
23 victims would recognize his voice, so he tried to talk
24 as little as possible. They were blindfolded, and at
25 least while he abducted them and move -- he would kidnap

1 them, move them to a secluded area and then take off the
2 blindfold.

3 He talked about how he would target specific
4 victim types, that he preferred Caucasian women because
5 they were more passive and less likely to fight and
6 resist than African American women or minority women. He
7 kind of talked about the psychology of the victim and
8 how Caucasian women are more worried about just
9 surviving and they're less likely to struggle and so on.
10 He talked about how he would abduct these victims and he
11 would then take them to a private area and he would
12 expose himself and he would force them to masturbate
13 him.

14 There was not any penetration involved. He
15 wasn't interested in, you know, vaginal penetration or
16 oral copulation or anything like that. In fact, he had
17 very minimal contact, physical contact with the victims,
18 and so it was a very sort of narrowly focused, scripted
19 type of behavior where he would expose himself and he
20 would force them to masturbate him.

21 And he talked about the euphoric high that this
22 produced and how it was better than any drug and how he
23 knew he was going to do it again and how he -- the
24 length of the assaults was getting longer. He was
25 keeping the victims for longer and longer and he felt

1 that his violence was escalating, and he talked about
2 how he was afraid that if he got out, he would do it
3 again and he would probably kill his victims because he
4 didn't want to risk detection and getting caught again.

5 And so he really gave a very elaborate,
6 detailed, complicated explanation for his sexual
7 disorder. He talked about how he had assaulted many
8 unreported victims when he was out in the community. It
9 was very unusual to see such an honest -- you know, what
10 I interpret to be an honest self-disclosure and -- and a
11 plea for help.

12 Q All right, Doctor Zinik. Thank you. As part of
13 your -- let's move on. Earlier you testified that you
14 diagnosed Mr. King with a serious mental illness,
15 abnormality or disorder.

16 A Yes.

17 Q How does a psychologist go about doing that?

18 A Well, you gather information from all of these
19 sources. You look at the history of the individual. You
20 interview the individual, if they're willing to
21 interview, and then you consult the Diagnostic and
22 Statistical Manual which is the catalog of mental
23 disorders published by the American Psychiatric
24 Association and you arrive at a mental disorder that you
25 think is appropriate.

1 Q Is the Diagnostic and Statistical Manual
2 well-accepted in your field?

3 A Yes.

4 Q What, if any, diagnosis did you render in this
5 case?

6 A Okay. I diagnosed Mr. King -- I'm going to refer
7 to my report here -- with paraphilia NOS, nonconsent.

8 Q I'm sorry. Could you please explain what NOS is?

9 A Okay. Paraphilia NOS is -- the paraphilias are
10 a group of sexual disorders that appear in the
11 Diagnostic Manual, and there are a few that are
12 specified such as pedophilia and voyeurism and
13 exhibitionism and so on. There's about eight of those
14 that are specifically identified, and then there is
15 what's called a residual category which is paraphilia
16 NOS. NOS stands for not otherwise specified, and this is
17 the term that you would use to diagnose any paraphilia
18 that is not included in the eight that are specifically
19 identified in the manual, and there are many
20 paraphilias.

21 In fact, there's a famous book called Love Maps
22 written by a sexologist named John Money (phonetic)
23 published in the mid 1980s where it's sort of an
24 encyclopedia of paraphilias, and he has over 60
25 paraphilias in his book. And so there is no specific

1 diagnosis for a rape paraphilia or a paraphilia
2 nonconsent or paraphilic coercive disorder, so this
3 would be the appropriate way to diagnose it. You would
4 diagnose paraphilia NOS, and then you'd put the
5 descriptor, which would be paraphilia NOS, nonconsent or
6 paraphilia NOS, forced sex with nonconsenting victims.
7 Some psychologists use paraphilia NOS, rape, but these
8 are all synonymous terms that really mean the same
9 things, and that would be the correct way to diagnose
10 the sexual disorder according to the DSM.

11 Q For clarity, is the diagnosis paraphilia not
12 otherwise specified a diagnosis in the Diagnostic and
13 Statistical Manual?

14 A Yes.

15 Q And you diagnosed him with some other diagnoses.
16 What are those?

17 A Yes. I diagnosed him with exhibitionism, which
18 is the, you know, intense repeated urges, fantasies and
19 behaviors that involve exposing his penis to a --
20 exposing his genitals to a stranger, and I diagnosed him
21 with polysubstance dependence. This is a polydrug
22 addiction disorder that includes -- he has a long
23 history of substance abuse, substance dependence that
24 includes alcohol, marijuana, heroin, methphetamines,
25 cocaine. And then I also diagnosed him with antisocial

1 personality disorder.

2 MR. LOCKRIDGE: Your Honor, may I approach the
3 easel?

4 THE COURT: You may, sir. Mr. Lockridge, let
5 me just make an inquiry. We're about five 'til 12. I do
6 intend to break around 12. If we're about to launch on
7 an area that will take --

8 MR. LOCKRIDGE: This is a good time to take a
9 break, Your Honor.

10 THE COURT: Okay. Why don't we do that? We'll
11 take our lunch break. We'll reconvene at -- let's just
12 round it up. We'll reconvene at 1:00.

13 (Whereupon off the record.)

14 THE COURT: Good afternoon, folks.

15 AUDIENCE: Good afternoon, Your Honor.

16 THE COURT: Before we get started with the
17 continuation of the testimony, let me just expand a
18 little bit on my comments regarding use of the screens
19 that we have in the courtroom. To the extent that
20 underlining is used or circling, the directive that I
21 gave previously was that if it's being used, the parties
22 using it, Counsel using it needs to disclose its use and
23 needs to describe what's being underlined, the location
24 and so forth so that's clearly stated on the record.

25 I'm also directing that documents should not be

1 shown on the screen unless the examining counsel is
2 referring to it at the time. I believe that the parties
3 each have the capability of pulling up documents on
4 their screens for their own use at counsel table without
5 it being shown on the screen that would be visible at
6 the bench or at the witness stand, and I think it's only
7 appropriate that the screens that -- the display at the
8 bench and at the witness stand display only documents
9 that are the subject of questioning by examining counsel
10 at that time. Very good.

11 Doctor Zinik, let me remind you, sir, that
12 you do remain under oath.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Mr. Lockridge?

15 MR. LOCKRIDGE: Yes, Your Honor. One
16 administrative matter --

17 THE COURT: Yes, sir.

18 MR. LOCKRIDGE: During questioning -- if
19 you'll recall, we, Your Honor, recently signed the
20 amended pretrial order.

21 THE COURT: Yes.

22 MR. LOCKRIDGE: Apparently two of the
23 documents that were added to that pretrial order didn't
24 make it in the exhibit notebooks, and I do have those.
25 They both fall under Exhibit 34, and I have those here

1 --

2 THE COURT: That would be excellent --
3 would you approach with them, please? Thank you.

4 MR. LOCKRIDGE: I would note, Your Honor, that
5 there is one page of Exhibit 34 in the binder already.
6 These would be the last two remaining pages.

7 THE COURT: Very good. So these go at the rear
8 of Tab 34?

9 MR. LOCKRIDGE: That's correct, Your Honor.

10 THE COURT: Thank you. Very good, sir. You may
11 proceed.

12 MR. LOCKRIDGE: Thank you, Your Honor. I think
13 as we dismissed for lunch, Your Honor, I was about to
14 approach the easel.

15 THE COURT: That will be fine.

16 BY MR. LOCKRIDGE:

17 Q Doctor Zinik, I believe we left off before
18 lunch -- you were discussing the topic of paraphilias. I
19 would direct your attention to the easel. Do you
20 recognize what that is?

21 A Yes.

22 Q What does that show?

23 A That's a chart I made that gives a definition of
24 paraphilias.

25 Q And would referring to that chart help you in

1 your testimony today?

2 A Yes.

3 Q Could you please explain what that chart shows?

4 A Okay. This is -- paraphilias are a category of
5 sexual disorders. This is the definition from the
6 Diagnostic Manual, and they're defined as recurrent
7 intense sexually arousing fantasies, urges or behaviors
8 generally involving either, one, non-human objects, two,
9 suffering or humiliation of one's self or one's partner
10 or, three, children or other nonconsenting persons, and
11 a sexual preoccupation must occur over a period of at
12 least six months and cause significant distress or
13 impairment in social, occupational or other important
14 areas of functioning.

15 Q With respect -- how does the definition there of
16 paraphilias relate to your diagnosis of paraphilia
17 not otherwise specified?

18 A Okay. Well, again, to begin with, as I
19 mentioned, I diagnosed Mr. King with paraphilia not
20 otherwise specified, forced sex with nonconsenting
21 victims, so the definition of paraphilia NOS would have
22 to meet this criteria. In other words, Mr. King would
23 have to have recurrent, intense sexually arousing
24 fantasies, urges or behaviors involving in this case
25 forced sex with nonconsenting victims, and these urges

1 and fantasies and behavior must occur over a period of
2 at least six months and cause significant distress or
3 impairment in functioning. And, of course, being
4 incarcerated would be considered an impairment in
5 functioning. So the definition of paraphilia NOS, forced
6 sex with nonconsenting victims would fall under this
7 category.

8 Q Now, your diagnosis of -- you called it a script
9 or a forced sex, what does forced sex mean with regard
10 to your diagnosis?

11 THE COURT: Can I stop you one moment? I've
12 got on my screen now up here a document that is
13 different from the chart that is the --
14 (Whereupon off the record.)

15 MR. LOCKRIDGE: It is not on our screen.

16 THE COURT: What do you have on your screen?

17 THE WITNESS: I have like a spreadsheet of
18 stuff.

19 MR. LOCKRIDGE: It may be coming from our
20 computer, Your Honor, if you give us a moment.

21 THE COURT: Certainly. It's now off of my
22 screen and I can see Doctor Zinik's screen, and it's off
23 of his screen as well.

24 MR. LOCKRIDGE: We apologize about that, Your
25 Honor.

1 THE COURT: That's quite all right. Let me
2 also note for the record that the chart that's the
3 subject of examination of Doctor Zinik at this point is
4 behind tab 56 following the timeline.

5 MR. LOCKRIDGE: Yes. Thank you, Your Honor.

6 THE COURT: Very good. Mr. Lockridge, sir, I
7 apologize for interrupting you after you asked a
8 question. I hope you recall it.

9 MR. LOCKRIDGE: Thank you, Your Honor. I
10 apologize for the inconvenience.

11 BY MR. LOCKRIDGE:

12 Q You were discussing paraphilia not otherwise
13 specified, and I asked you a question regarding what
14 forced sex means.

15 A Okay.

16 Q Could you answer that question?

17 A Yes. I think in -- what that really could mean
18 is any kind of coercive sex, and in Mr. King's case,
19 what it involves is, you know, forcing victims to --
20 sexually exposing himself to victims, forcing them to
21 watch him and his activity of forcing the victims to
22 masturbate him. That would qualify as coercive sex or
23 forced sex with nonconsenting victims.

24 Q All right. Doctor Zinik, let's go through the
25 chart up there on the easel. Could you please explain

1 what, if any, recurrent intense sexually arousing
2 fantasies, urges or behaviors that you diagnosed Mr.
3 King as experiencing?

4 A Okay. Well, we've already talked about how Mr.
5 King has admitted to having these recurring sexual
6 fantasies about tying women up and raping them. That was
7 a term he used back in 1976. He was more descriptive
8 about that in his discussion with Doctor Dawn Graney in
9 2009 where he described the whole paraphilia I explained
10 earlier about forcing women to watch him masturbate --
11 exposing himself to women and forcing them to masturbate
12 him -- doesn't involve any penetration, but it is, you
13 know, just as coercive and involving threat of bodily
14 harm.

15 He would obviously kidnap these victims,
16 sometimes at knifepoint. He would restrain them with
17 handcuffs and ropes and blindfolds and things like that,
18 and, you know, this kind of event would be extremely
19 traumatic to the victim despite the lack of penetration
20 or forced intercourse.

21 THE WITNESS: By the way, Your Honor, I think
22 it's important to understand that doesn't -- just
23 because there's no penetration doesn't reduce what we
24 call the rape trauma syndrome or the traumatic effect
25 that the victim would experience, especially being held

1 captive like this sometimes for hours and hours and
2 being tied up and so on -- would have perhaps life
3 changing type of traumatic effects on the victims.

4 A So, you know, I think it's an unusual form of
5 paraphilia NOS, nonconsent or forced sex with
6 nonconsenting victims, but it certainly meets the
7 criteria of that type of paraphilia.

8 Q Doctor Zinik, with regard to those numbers, one,
9 two and three up on the chart, which, if any, of those
10 apply in this case?

11 A It would be number three, the nonconsenting
12 persons.

13 Q And that would be the victims?

14 A The victims, yes.

15 Q What's it mean with regard to the period of at
16 least six months?

17 A You know, interestingly, the six month criteria
18 was really arbitrary. I heard Doctor Allen Frances say
19 that. He's one of the editors of the DSM, the Diagnostic
20 Manual, and he talked about how the -- this definition
21 of paraphilic first appeared in the Third Edition of
22 the DSM back in 1980 and that was when the six month
23 criteria first appeared, and it was really just kind of
24 an arbitrary decision. They pulled that time frame out
25 of a hat. There's really no specific clinical importance

1 to it, but the idea is that there has to be some
2 duration to the fantasies and urges and they can't just
3 be, you know, a brief single type incident or a short
4 phase of behavior. There has to be some duration over
5 time, and in the case of the DSM, they just chose six
6 months as that time frame.

7 But, of course, this would apply for Mr. King
8 because he's -- first started sexually offending -- I
9 mean, his first violent -- well, I mean, if you consider
10 the first offense where he exposed himself to the two
11 little girls as an act of child molesting as a sexually
12 violent offense, you know, that began at age 15, and
13 then his most recent -- that began in 1974, and then his
14 most recent sex offense was at age 29 in 1988. So we
15 clearly have a long time frame of the same type of
16 sexually violent behavior that would meet the -- way
17 over the six month criteria for the paraphilia
18 diagnosis.

19 Q And staying up there on the easel, directing
20 your attention to the easel again, Doctor Zinik, what's
21 it mean to say the urges or fantasies cause significant
22 distress or impairment in social, occupational or other
23 important areas of functions?

24 A You know, what that means -- that's the
25 impairment that we're talking about, and, you know, the

1 impairment can be subjective. It can cause the
2 individual distress, and I think that has been expressed
3 by Mr. King in the past. He was very concerned that --
4 he's talked about how he was afraid he would get out and
5 reoffend and -- caused him a lot of grief.

6 And then the other form of impairment is that
7 there's some individuals that suffer from paraphilias,
8 but it doesn't bother them. They don't think the
9 behavior is wrong. They're not personally distressed by
10 it, but, nevertheless, it interferes with their social
11 functioning. Some of them are incapable -- when a
12 paraphilia is really in a very powerful exclusive form
13 we call it, it interferes with normal emotional love
14 relationships and healthy dating and intimacy and what
15 we call pair bonding, and so some individuals are not
16 able to form healthy, intimate life relationships with
17 an age appropriate adult. Some, you know, may get in
18 trouble in the workplace or in other contexts. So those
19 are the other forms of impairment that can occur.

20 Q Doctor Zinik, in your view, does this diagnosis
21 of paraphilia not otherwise specified, nonconsent
22 constitute a serious mental illness, abnormality,
23 disorder under the Federal law?

24 A Yes, it does, absolutely, because of the -- you
25 know, the really terrible violent crimes that are the

1 result of it and the trauma to the victims that we've
2 already discussed.

3 Q In your opinion, does this diagnosis have any
4 relationship to his volitional or emotional capacity?

5 A Well, yes, it does. I mean, that's not -- the
6 volitional impairment is not an element of the clinical
7 diagnostic criteria. You don't find that in the DSM, but
8 I think that is evident in Mr. King's case because of
9 some of the things we already discussed, how quickly he
10 reoffends after being released from custody, how he's
11 described in several places over the years, over the
12 decades that he feels like he's out of control. He can't
13 control these impulses. He's made some very descriptive
14 statements about being out of control, which is exactly
15 what we mean by the volitional impairment.

16 Q All right, Doctor Zinik, you testified that Mr.
17 King's last conviction for a sexually violent offense
18 was in 1988. How can you say to a reasonable degree of
19 professional certainty that he continues to suffer from
20 this diagnosis?

21 A Well, I think there's a few reasons. One is that
22 a -- paraphilias in general, all of them, are very
23 deeply entrenched lifelong sexual preferences. These are
24 preferred forms of sexual arousal that don't go away
25 over time, even if the individual doesn't have the

1 opportunity to act on them. These are lifelong,
2 entrenched sexual preferences. They can be kept alive,
3 so to speak, with masturbation fantasies so that even
4 though the individual is in custody or somehow prevented
5 from contact with his victim pool, it's possible that he
6 could be reinforcing and reenacting the deviant sexual
7 behaviors during his sexual fantasies.

8 And the other reason that I think this applies
9 to Mr. King is the -- I'm repeating myself here, but,
10 you know, he's continued to make these disclosures about
11 having this sexual disorder ever since he was 15, and
12 most recently just two years ago in 2009 during his
13 precertification evaluation with Doctor Graney, he
14 talked about how he felt quite certain that he was going
15 to get out and do it again, but he was like a -- he used
16 the analogy of being a hibernating bear and if he's
17 released, he's going to wake up and he's going to be
18 famished with hunger and he's going to go out and commit
19 these violent crimes again and even used the phrase
20 about eating his victims, referring to killing his
21 victims, so I thought that was a very apt description of
22 not only the paraphilia but that it is currently active
23 and sort of alive in his psychological makeup.

24 Q All Right, Doctor Zinik. Turning to the --
25 earlier you mentioned the terminology paraphilic

1 coercive disorder.

2 A Yes.

3 Q In what way, if any, does that relate to your
4 diagnosis of paraphilia not otherwise specified,
5 nonconsent?

6 A Well, it's really just a synonymous term for the
7 same thing. Like I said, there's -- all these terms
8 really could apply to the same sexual disorder
9 paraphilia NOS, nonconsent, rape paraphilia, paraphilia
10 coercive disorder.

11 Now, the term paraphilic coercive disorder has a
12 long and controversial history. It was a paraphilic
13 disorder that was first proposed in the DSM -- actually,
14 it was first called sexual assault disorder. That was
15 the original title, and that was proposed for inclusion
16 in the DSM-III, but it was not accepted.

17 The DSM-III was published in 1980. And then the
18 term paraphilic coercive disorder first appeared as a
19 recommendation for the DSM-III-R, the revised edition of
20 the DSM-III, and there was a very well-publicized debate
21 about the issue back in the mid 1980s. This was in the
22 news a lot of the time and there was a lot of
23 controversy over whether this was a legitimate
24 diagnosis.

25 There were a lot of politics over it, whether it

1 should be included in the DSM or not. There was a lot of
2 concern -- at that time the rape prosecution laws were
3 being reformed and revised, and there was concern that
4 rapists would claim that they had paraphilic coercive
5 disorder and that they had a mental illness, that they
6 weren't really criminals, but they were -- they had
7 mental problems and that they should be sent to
8 treatment to mental hospitals and not be sent to prison
9 and that there was a concern that this would be misused
10 as a way of avoiding responsibility for criminal
11 behavior and being released early from treatment from
12 mental hospitals and this sort of thing. There was
13 really a very loud public outcry. Feminist organizations
14 were opposed to it and so on.

15 So, anyway, the long and the short of it was
16 that it was ruled out of the DSM-III-R by a vote of ten
17 to four. There were 14 members on the DSM committee at
18 that time, and they outvoted paraphilic coercive
19 disorder, so it was not accepted as official -- as an
20 official diagnosis. Then it was reproposed about two
21 years ago.

22 Currently we're on the sixth edition of the
23 manual, the DSM -- manual. This is the sixth edition,
24 which is actually -- it's the DSM Fourth Edition Text
25 Revised, DSM-IV-T-R, and the Fifth Edition, the DSM-V is

1 currently being compiled, and that is scheduled for
2 publication in 2013.

3 So a couple years ago, the DSM committee --
4 there was a paraphilic workgroup that recommended that
5 paraphilic coercive disorder be reconsidered as an
6 official diagnosis, and as you can imagine, that was
7 kind of stimulated, I think, to a large degree by the
8 enactment of SVP laws and the Adam Walsh Act and these
9 civil commitment laws that started occurring among
10 states in -- like the mid 1990s was when the civil
11 commitment laws reappeared, and so there developed
12 renewed interest in paraphilic coercive disorder and
13 paraphilia non -- OS, nonconsent, because this was the
14 diagnosis that was most commonly used to be a qualifying
15 mental disorder for serial rapists and sex offenders.

16 You know, there's two groups that fall into the
17 SVP camp, so to speak, two primary diagnostic groups.
18 There are the child molesters who are diagnosed with
19 pedophilia, the sexual preference for children, and then
20 there are the serial rapists or the repeat rapists, and
21 since we don't have an official diagnostic term for this
22 type of rape paraphilia, paraphilic coercive disorder
23 was reproposed for the DSM, but just a few months ago,
24 it turned out that it was decided not to include it as
25 an official paraphilic diagnosis, but it has been moved

1 to what's called the appendix of the DSM-V which is a
2 category for mental disorders where they're worthy of
3 future study and need more research.

4 And so at the present time, paraphilia NOS,
5 nonconsent or forced sex with nonconsenting victims
6 would be the appropriate diagnosis for someone like Mr.
7 King.

8 Q Thank you. And is that paraphilia not otherwise
9 specified, nonconsent that you just mentioned -- in your
10 experience, has that been accepted in courts you've
11 testified as a valid diagnosis?

12 A I think it has. I actually think it's widely
13 accepted among the clinical community who is familiar
14 with this population. The community that evaluates and
15 treats sex offenders, particularly SVP, sexually violent
16 predators, I mean -- you know, and I've done some of my
17 own research in that area, and there has been wide
18 agreement among the professionals that I've surveyed on
19 the existence of this type of rape paraphilia, and there
20 are -- there's old studies from the 1990s that show that
21 there was widespread agreement among particularly the
22 clinical community that treats sex offenders.

23 Q Okay. Now, just with regard to the diagnosis
24 itself of paraphilia not otherwise specified,
25 nonconsent, have you testified to that diagnosis in

1 court?

2 A Yes, I have.

3 Q Was that diagnosis accepted?

4 A Yes, it was.

5 MR. LOCKRIDGE: Your Honor, may I approach the
6 easel?

7 THE COURT: You may, sir.

8 BY MR. LOCKRIDGE:

9 Q All right, Doctor Zinik, trying to finish up
10 with this particular diagnosis, can you please refer to
11 the easel? And do you know what that particular chart
12 shows?

13 A Yes.

14 Q And what is that?

15 A This is the definition of paraphilia NOS, forced
16 sex with nonconsenting females. These are the specific
17 symptoms, and underneath that are the specific symptoms
18 and behaviors, the signs and symptoms that are
19 manifested by Mr. King.

20 Q Could you just real briefly go through those
21 signs and symptoms?

22 A Okay. Well, the ones that apply to Mr. King,
23 these are -- there's kind of two main categories. The
24 first is what we call persistence of sexual offending,
25 and this is demonstrated by multiple victims of actual

1 or attempted coercive sexual acts, so these are the
2 repeat offenders that assault multiple victims over
3 time, the serial sex offenders.

4 Number two is multiple sentencing dates. In Mr.
5 King's case, he has four for sexually motivated
6 aggression. And, now, what we mean by this is this is
7 called the cycle of offending where the offender commits
8 an offense, he gets caught, gets arrested, gets
9 prosecuted, convicted, sanctioned somehow, usually by
10 going to jail or prison, gets out into the community and
11 then repeats that cycle. And the more times an offender
12 repeats that cycle, the greater the persistence of
13 sexual offending that he demonstrates.

14 In Mr. King's case, he has four of those cycles
15 where he offended, you know, got caught, incarcerated,
16 released and reoffended, so, you know, now he's on his
17 fifth offense. He's had four cycles of reoffending you
18 might say, and that's really powerful evidence, I think,
19 that this is a very compelling disorder that drives him
20 to commit sexually violent crimes.

21 Number three is history of sex offending as a
22 minor and as an adult. This is a well-established risk
23 factor in the sex offender literature. Most juveniles
24 who commit sexual crimes never reoffend. There's a very
25 small minority that never reoffend later on in

1 adulthood, and there's a very small minority that do,
2 that start their sex offending careers as juveniles and
3 continue to reoffend as adults. And so when you've got
4 that history of reoffending as a juvenile and then
5 reoffending as an adult, what it typically means is that
6 the meaning of the sex offense in adolescence signaled
7 the onset of sexual deviance that became a life pattern
8 that carries out throughout the offender's life. That's
9 true in Mr. King's case. He has two -- actually, I
10 think, three arrests as a juvenile for sex offending. We
11 have the two in 1974 and the one in '75.

12 Now, the fourth item on the list is rapid
13 reoffending which is defined as committing a new
14 sexually violent crime within a year after being
15 released to the community or a year after sanctions for
16 a prior sexually violent crime, and we have that in Mr.
17 King's case. We know that he was paroled September 3,
18 1987 from his fourth sex offense that was committed in
19 1983 and five and a half months later he reoffended on
20 February 19, 1988. So he was on parole, only been out
21 five and a half months and he committed a very similar
22 attempted abduction of a female victim.

23 Moving on to behavioral signs -- may I move on?
24 Q Yes, please.
25 A Okay. There are certain behavioral signs. These

1 are the signs that are -- if you review the literature
2 on paraphilia NOS and rape paraphilia and so on as well
3 as -- these were factors that were verified by my
4 research. These are signs, behavioral signs of this type
5 of forced paraphilia.

6 The first one is committing acts of coercive sex
7 despite the presence of an available sexual partner. I
8 mean, you would have to ask, if the offender had an
9 opportunity to have consenting sex with his partner but
10 they went on to commit rape and forced sexual crimes,
11 something must be driving them to do that. They weren't
12 content to -- you know, they weren't satisfied or
13 content you might say by their current relationship with
14 their available sexual partner. And we know that in Mr.
15 King's case, he was newly married in 1983 when he
16 sexually offended and in 1988, so that item would apply
17 to him.

18 The second item is carries a rape kit in their
19 car or carries a rape kit in some form, typically in
20 their car. This is evidence of advanced planning and
21 premeditation. We've already talked about how this
22 applies to Mr. King.

23 And the third item is stereotyped rituals or
24 repetitive patterns of behavior that demonstrates a
25 modus operandi, and this is kind of a well-established

1 description of a paraphilia, that the more the behavior
2 is ritualized and repeated and scripted in this certain
3 fashion, the more -- you know, certain props are
4 required and certain events have to occur in a certain
5 order to produce a sexual arousal, the more likely it is
6 to be a paraphilia, and I think the way that Mr. King
7 described his sexual offending to Doctor Graney in 2009
8 would fit this category.

9 He talked about how he seeks out a certain type
10 of victim and he abducts them at knifepoint, blindfolds
11 them, ties them up, and then the only thing he has them
12 do is watch him while he exposes himself and forces them
13 to masturbate him. It's very kind of narrowly defined
14 and scripted.

15 Q Moving on to your next diagnosis, I believe you
16 stated you diagnosed Mr. King with exhibitionism, is
17 that correct?

18 A Yes.

19 Q And are the diagnostic criteria for
20 exhibitionism set forth in the Diagnostic and
21 Statistical Manual?

22 THE COURT: Mr. Lockridge, before we get past
23 this chart, I just want to note for the record that the
24 chart about which Doctor Zinik has been testifying is
25 the third chart after the timeline under Exhibit 56.

1 MR. LOCKRIDGE: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 MR. LOCKRIDGE: And I would ask to approach
4 the easel one more time, Your Honor.

5 THE COURT: You may.

6 MR. LOCKRIDGE: And that document I'm about to
7 show, Your Honor, is also -- that Exhibit 56.

8 THE COURT: That is, in fact, the next chart
9 under Tab 56 -- in Exhibit 56. Mr. Lockridge?

10 MR. LOCKRIDGE: Thank you, Your Honor.

11 BY MR. LOCKRIDGE:

12 Q Doctor Zinik, what does the easel show at this
13 time?

14 A This is the definition of exhibitionism that you
15 find in the DSM.

16 Q If you could, could you please explain what
17 exhibitionism is and how, if at all, Mr. King meets the
18 criteria for that diagnosis?

19 A Okay. This is another paraphilia that involves
20 intense recreant sexual fantasies, urges or behaviors
21 involving exposure of one's genitals to a stranger. The
22 individual may masturbate while exposing himself or
23 later while fantasizing -- exposing himself. Typically
24 exhibitionists do not attempt further sexual activity
25 with the victim or the stranger. Interestingly, they

1 usually keep their distance and then leave when they're
2 done, but that isn't always the case, and it isn't the
3 case with Mr. King, as we've already discussed.

4 Often there's a desire to shock or surprise the
5 observer, and sometimes these men will report that they
6 have sexually -- while exposing themselves, they have
7 fantasies that the observer or the victim will also be
8 sexually aroused and want to have sex with them. That's
9 part of the intrapsychic motivation and the fantasy that
10 propels them to do it.

11 Q Does this particular diagnosis also have a
12 period, a minimal period for which the person must have
13 exhibited --

14 A Yes. That's not on there, but there's a six
15 month duration requirement for this paraphilia just like
16 all of the paraphilias, and it is also causing --
17 distress or impairment of functioning is another
18 criteria.

19 Q To the extent you haven't already explained with
20 regard to Mr. King's case, how does he fit these
21 criteria?

22 A He fits this criteria because there's evidence
23 that he began sexually exposing himself when he was 12
24 years old. He was arrested for it for a couple times
25 when he was 14 -- or 15, excuse me. You know, it's

1 reported by his parents he went to treatment with mental
2 health professionals as an adolescent for this problem.
3 He reported these fantasies of exposing himself when he
4 was in treatment at the Phipps clinic in 1976, and he
5 had the incident in 1993 that we already described where
6 he was in Federal prison and was in treatment with a
7 female therapist and was talking about his exhibitionism
8 and his compulsion to have women touch his penis, and
9 then he, in fact, asked his female treatment provider to
10 do that.

11 And again just recently in his important
12 interview with Doctor Graney in 2009, he talked about
13 how he still has daily fantasies of exposing himself. He
14 talked about how he had been using heroin in prison to
15 dampen his sexual impulses so that he wouldn't expose
16 himself to the female officers in prison and, you know,
17 that that was currently a problem for him.

18 Q All right. Thank you, Doctor Zinik. Is
19 exhibitionism, in your opinion, a serious mental
20 illness, abnormality or disorder?

21 A Yes. I think it is. I mean, I think it
22 certainly -- it commonly results in breaking the law and
23 criminal sanctions. It's typically considered a
24 nonviolent paraphilia, but I think in Mr. King's case,
25 he's unusual in the fact that it's sort of merged

1 together. It's almost as if his paraphilia for forced
2 sex and his exhibitionism have merged together into one
3 type of paraphilia that causes him to expose himself and
4 have the victims masturbate him.

5 Q And that -- you testified again that Mr. King's
6 last conviction was in 1988. How can you say to a
7 reasonable degree of professional certainty that he
8 continues to suffer from exhibitionism?

9 A Well, again, I'm repeating myself, but we've
10 got -- he's made admissions to this fact more recently
11 than 1988, particularly with Doctor Graney in her
12 precertification report.

13 Q All right. Doctor Zinik, I'd like to turn to
14 your next diagnosis. I believe you diagnosed -- through
15 your testimony, you indicated you diagnosed Mr. King
16 with antisocial personality disorder.

17 A Yes.

18 Q And are the criteria for that diagnosis set
19 forth in the Diagnostic and Statistic Manual?

20 A Yes.

21 Q Is that a diagnosis well-accepted among
22 professionals in your field?

23 A Yes.

24 MR. LOCKRIDGE: Your Honor, may I approach the
25 easel? THE COURT: You may.

1 MR. LOCKRIDGE: Thank you.

2 BY MR. LOCKRIDGE:

3 Q Doctor Zinik, I'd like to refer you to the chart
4 on the easel once again. Could you please -- to the
5 extent you know, what is that?

6 A Okay. This is the DSM criteria for antisocial
7 personality disorder.

8 MR. LOCKRIDGE: Briefly, just for the record,
9 Your Honor, I'd like to note that exhibit as well as --
10 under tab 56.

11 THE COURT: Yes, it is. In fact, it is the
12 next chart, and I believe the last chart at least under
13 my tab 56 -- Exhibit 56 for the Government.

14 MR. LOCKRIDGE: Thank you.

15 BY MR. LOCKRIDGE:

16 Q Please continue.

17 A Okay. So this is diagnostic criteria from the
18 DSM -- manual, and you know, personality disorders
19 involve these longstanding maladaptive patterns of
20 behavior that interfere with a person's social,
21 occupational and emotional functioning. Antisocial
22 personality disorder in particular is characterized by a
23 pervasive pattern of disregard for and violation of the
24 rights of others that begins in childhood or early
25 adolescence and continues into adulthood.

1 There's actually seven individual factors under
2 the definition of antisocial personality disorders, but
3 these were the five that I felt applied to Mr. King. The
4 first is failure to conform to social norms by
5 repeatedly performing acts that are grounds for arrest.
6 The second is deceitfulness, repeated lying, use of
7 aliases or conning others. The third is irritability and
8 aggressiveness, repeated physical fights or assaults.
9 The fourth is reckless disregard for the safety of self
10 or others, and the fifth is lack of remorse.

11 Q How do those numbered items on the board there
12 appear, if at all, in Mr. King's case?

13 A Well, I think they all appear in Mr. King's
14 history. As we've already said, he's got five arrests
15 for what I believe are sexually motivated offenses. He's
16 only got one other arrest in his history, which was for
17 possession of marijuana, so we would call Mr. King a
18 sexual offender specialist, which is interesting. This
19 has really comprised the sum total of his criminal
20 career. He demonstrates deceitfulness, repeated lying
21 and conning of others.

22 He has claimed in the past that he had a
23 disorder called multiple personality disorder. For a few
24 years, he actually had -- he had -- he was spending a
25 lot of time in treatment with the BOP psychologist

1 talking about how he had all these different
2 personalities and, you know, put a lot of effort into
3 conning others and has later admitted that that was all
4 a sham and a made up disorder.

5 He's also claimed to be suicidal on several
6 occasions in the past in order to gain privileges or,
7 you know, be changed to different housing assignment or
8 something like that and then admitted that he never
9 really was suicidal but he was just using this as a gain
10 to get what he wanted.

11 It's significant that he has made these
12 admissions ever since the mid 1970s of having impulses
13 to commit sexual crimes, expose himself, assault victims
14 and so on, made this elaborate presentation to Doctor
15 Dawn Graney in 2009 all about it, so he showed
16 consistent -- what I suspect to be honest
17 self-disclosure about his sexual disorder up until last
18 year, 2010, when he got this letter from his ex-wife,
19 Marlene, who invited him to stay with her when he's
20 released from prison, and after that time, he claimed
21 that -- you know, he recanted his earlier admissions and
22 repudiated what he said to Doctor Graney and Doctor
23 Ivonne Bazerman, another one of the precertification
24 evaluations that was written about him in 2009. He's
25 repudiated all that and now claims that he made all that

1 up and that those were lies, too. And, so you
2 know, what I suspect is the recanting is not the truth
3 and that the admissions of the disorder are true because
4 we have evidence of those that goes way back to 1976,
5 long before he faced civil commitment, long before the
6 Adam Walsh Act, long before he was getting close to
7 being released to the community before he began to be
8 concerned that he might get out, reoffend because he
9 didn't have any support. We've got these consistent
10 admissions all the way through.

11 And now he's claiming that -- well, I don't know
12 if he's claiming that the early admissions -- forgive
13 me. I think in his letter he's claiming -- the letter he
14 wrote repudiating what he said was specifically replying
15 to the admissions he made to Doctor Bazerman and Doctor
16 Graney, but, you know, he's now claiming that he's never
17 had these impulses and these were not sexually motivated
18 crimes. I look at that as part of his con game, frankly,
19 the recanting, I think, which is an item here under the
20 antisocial personality disorder, the number two item,
21 the deceitfulness item.

22 Okay. Number three is irritability and
23 aggressiveness, repeated physical fights or assaults.
24 He's described as being angry in the records. He
25 admitted to me during the interview that he was angry as

1 an adolescent and young man because of the disabilities
2 that he had as a kid and the kind of teasing and
3 ridicule that he suffered and the ostracism, there's
4 also references to his anger at women in his BOP
5 records, too. And he has a couple prison infractions and
6 rule violations for being threatening and, you know,
7 threatening staff.

8 Okay. Number four is reckless disregard for
9 safety of self or others. I think this applies to his --
10 you know, his criminal behavior, the violent crimes he's
11 committed in the community. He also has continued to
12 abuse narcotics during his prison term up until as
13 recently, I think, as 2009. That was his last infraction
14 for use of narcotics. You know, this also speaks to his
15 substance dependence and his addiction, but it's another
16 example of disregard for safety and self.

17 And then number five, lack of remorse, there's
18 one statement in the records. I think it was up on the
19 timeline where he talked about he said I have no
20 remorse, and I think he showed some remorse in the
21 admissions that he made to Doctor Graney and Doctor
22 Bazerman, but now he's claiming that those were all, you
23 know, a ruse and that he really -- those weren't true
24 and he's retracting those statements, and I think that
25 shows a lack of remorse.

1 Q Thank you, Doctor Zinik. Turning to -- next
2 issue, one of the things you were asked to determine is
3 whether Mr. King will have serious difficulty refraining
4 from sexually violent conduct or child molestation if
5 released, is that correct?

6 A Yes.

7 Q And you testified -- what was your answer to
8 that?

9 A I believe that he will, yes.

10 Q How do you go about -- in your field of work as
11 a psychologist, how do you go about determining whether
12 someone will have serious difficulty in refraining from
13 sexually violent conduct or child molestation?

14 A Well, you look at their history. You look at
15 their pattern of offending. You look at the timing of
16 offenses. You look at the number of cycles of offending
17 that we've already described. You look at how quickly
18 they reoffend after they're released to the community.
19 You look at the statements that they've made about their
20 offending behavior. All of these things -- I think
21 there's plenty of evidence that demonstrates that Mr.
22 King will have serious difficulty refraining from
23 committing sexually violent behavior based on all of
24 those things.

25 You also look at the fact of whether or not

1 they've completed any sex offender treatment, and Mr.
2 King has not in -- in this case, he's had a fair amount
3 of general counseling and therapy, but he's never -- at
4 least since his last offense in 1988, he has not
5 participated in a structured sex offender specific
6 treatment program.

7 And I think you also look at their current
8 attitudes and presentation about their crimes, and, of
9 course, two years ago, he was being forthcoming and
10 taking responsibility for his crime and his sexual
11 deviance, but now he's saying I never committed any
12 sexually violent crimes, I was only attempting to rob my
13 victims and I don't have any problems -- I don't have
14 any sexual problems, I don't have any sexual deviance.
15 I refuse to register as a sex offender. This is what he
16 says. He's refusing to register as a sex offender if
17 he's released to the community because he believes that
18 he has not been convicted of any sexual crimes that
19 would require that, and, you know, he's seeming,
20 you know, pretty noncompliant with any of the kind of
21 conditions that might be placed on him to reduce his
22 risk to reoffend.

23 Q Now, in guiding your opinion with regard to his
24 likelihood or serious difficulty in refraining from
25 sexually violent conduct or child molestation, did you

1 use any instruments to guide you in that determination?

2 A Yes, I did.

3 Q What type of instruments did you use?

4 A I used three actuarial risk scales.

5 Q What is an actuarial risk scale?

6 A Okay. An actuarial risk scale is an instrument
7 that is designed to improve the probability of risk
8 assessment and accuracy in predicting, you know, whether
9 offenders may reoffend or not.

10 Q All right. And how do those usually generally
11 work?

12 A Well, how do they work? It's sort of
13 complicated, but the way they work, they're what you --
14 let's see. Let's see if I can kind of boil this down. If
15 I were doing what we call unguided risk assessment
16 without using any kind of tools or risk scales to guide
17 my judgment, I would be -- you know, in that case, the
18 evaluator has to predict whether the offender is going
19 to reoffend or recidivate or not, and what studies have
20 shown in the past is that when evaluators base those
21 decisions only on clinical judgment without any
22 additional tools, their likelihood of being correct is
23 no greater than chance. They may as well be flipping a
24 coin, because the probability that they're going to be
25 correct is no greater than 50 percent. It's 50/50. It's

1 no greater than chance.

2 With the development of actuarial risk scales,
3 we are able to improve that probability so that our --
4 the risk scales give us what we call moderate predictive
5 accuracy. They're certainly not foolproof. You know,
6 they're not 100 percent correct and accurate, but they
7 do improve risk prediction to a small but significant
8 degree, at least enough to where they're useful, and I
9 like to think of them as sorting tools, that the
10 actuarial risk scales are like sorting tools. They help
11 you sort your offenders into categories of being low
12 risk, moderate risk and high risk, and, you know, so
13 they do improve the risk prediction.

14 They can't tell you whether -- you know, we
15 never know -- nobody has a crystal ball. We can't
16 predict what will happen in the future and, you know, we
17 don't know who will or will not reoffend. No evaluator
18 can say that with any definitive degree, but what we can
19 do is improve our risk assessment. They're sort of
20 like -- the analogy is weather reports. You look at the
21 weather report which helps you decide whether or not to
22 carry an umbrella. If there's going to be an 80 percent
23 chance of rain, you know, and you bring your umbrella,
24 you're likely to stay dry and not get rained on. If
25 there's a 20 percent chance of rain, then, you know, you

1 can take a risk and not go -- and go out without your
2 umbrella. So they just help improve risk prediction,
3 but -- and they're a starting point for the risk
4 assessment. They're not the end point, but they help you
5 identify low risk, medium risk and high risk offenders.

6 Q And how long, generally speaking, have actuarial
7 instruments been used in the field of civil commitment
8 studies -- cases?

9 A Since probably the late 1990s, mid 1990s.
10 I think the first one that came out was the RRASOR in
11 the mid -- maybe '97. Static-99 was the second one that
12 was published in 1999. And I should add that these
13 are -- this is what we call group data. You know, we're
14 comparing an individual case to a group of offenders
15 that appear to be similar, so we are making statements
16 that -- you know, again, we can't say specifically based
17 on the risk assessment whether this offender will or
18 won't reoffend, but we can say that based on his score
19 which is similar to other offenders in the original
20 study for which the risk scale was developed that that
21 group reoffends at a high rate at such and such a
22 percentage over a certain period of time, that he is
23 similar to that group, but that's as far as we can --

24 Q Are these instruments widely used by
25 professionals in your field?

1 A Yes, they are. And I think it's fair to say that
2 actuarial risk assessment has become the standard of
3 professional practice in evaluating sex offenders,
4 especially in these kinds of civil commitment cases.

5 Q Now, earlier you mentioned groups of offenders.
6 Are these actuarial instruments? What's the grouping
7 you're talking about? Can you please explain that a
8 little bit?

9 A Okay. Well, whenever these instruments are
10 developed, they're developed based on the results of a
11 specific sample of sex offenders that they've been
12 designed that -- been created against, so these are --
13 you know, these are specific groups of offenders that
14 were released from a certain prison or state hospital
15 somewhere, you know, a certain locale, in other words,
16 and were followed for a period of time and they were
17 tracked to determine those that reoffend.

18 So we take sex offenders, those who have
19 committed at least one sex offense, release them from a
20 particular jurisdiction, follow them over a specific
21 follow-up period and identify those that reoffend and
22 commit a new second sexual crime during that time frame
23 and those that don't and then we look at the
24 differences, what's different between those that
25 reoffend and those that don't and we develop a profile

1 of sorts, a profile of risk factors and then we can
2 score our own case on those risk factors.

3 But we have to keep in mind that all of these
4 instruments were developed on a specific population of
5 offenders that may or may not generalize to other
6 offenders in different countries, you know, different
7 periods of time historically, and this is called the
8 base rate problem, so we always have to keep in mind
9 that whatever sample of sex offender an actuarial
10 instrument was developed on has a particular base rate,
11 and that could influence the rate of reoffense of -- of
12 your case if you compare to that sample, and those base
13 rates are different among different samples.

14 Q All right. Now, what actuarial instruments did
15 you use in Mr. King's case?

16 A I used three instruments. I used the Static-99R,
17 the Static-99 Revised. I used the Static 2002R --
18 revised and I used the MNSOST-R Revised. MNSOST stands
19 for Minnesota Sex Offender Screening Tool Revised,
20 M-N-S-O-S-T - R.

21 Q Doctor Zinik, I would ask that you turn to
22 Exhibit Five in your white binder there and specifically
23 to page 22 of that exhibit. It's also Bates stamped in
24 the bottom right hand corner of 2006136.

25 A Okay.

1 Q Is this one of the reports you did?

2 A Yes, it is.

3 Q Is that the report you conducted on October 1,
4 2010 --

5 A Yes.

6 Q -- on Mr. King?

7 A Yes.

8 Q What is the graph there in the middle of that
9 page?

10 A That's a table of scores that Mr. King got on
11 the three actuarial instruments that we just described.

12 Q All right. We're going to put that document up
13 on the screen, if that will help you and your testimony.

14 A Okay.

15 Q Now, why did you use these particular
16 instruments?

17 A I used these because they're commonly used in
18 sex offender risk assessments around the country by SVP
19 evaluators doing civil commitment. I mean, I wouldn't
20 say they're universally accepted. There is some
21 disagreement over the use of actuarials. I wouldn't say
22 everybody uses them, and there is some criticism of
23 them, but I think the use of them is becoming more
24 widespread, and, like I said, it's becoming the standard
25 of practice for sex offender civil commitment

1 evaluations.

2 These three -- I've been trained to score these
3 three. These three are commonly used. These three all
4 have what we call cross-validation studies which support
5 their predictive accuracy and they just seem to be the
6 most relevant to Mr. King's case.

7 Q Have these three instruments been subjected to
8 peer review and publication?

9 A Yes.

10 Q What standards or rules, if any, are there in
11 controlling the use of these instruments?

12 A Well, they each have scoring manuals that
13 explain how each item is to be scored, and so they --
14 you know, the scoring is very standardized.

15 Q And you mentioned you were trained in the
16 scoring of these --

17 A Yes.

18 Q -- and the use of these? And did you base your
19 scoring on the rules -- manuals?

20 A Yes, I did.

21 Q I want to refer you to the first instrument
22 there, the Static-99R. What does the Static-99R predict?

23 A It predicts risk of future recidivism for
24 offenders who have committed at least one prior sex
25 offense.

1 Q So is it predicting sexual recidivism?

2 A Yes. Specifically sexual recidivism, yes.

3 Q And what does the graph there with respect to
4 the Static-99R tell us?

5 A What it tells us is that Mr. King got a score of
6 eight which puts him at the high risk level that
7 translates into the -- that places him at the 99th
8 percentile, meaning that he scores higher than 99
9 percent of other offenders that were used in the
10 developmental samples for which the Static-99R was
11 constructed.

12 He has what's called a risk ratio of nearly five
13 that's 4.96. What that means is that with the
14 developmental sample for the Static-99R, the typical sex
15 offender scored a two. He scored an eight, so he's --
16 you know, his risk ratio is nearly five times higher.
17 Now, this gets a little more complicated. So those are
18 what we call relative measures of recidivism.

19 Then we have what are called the estimated
20 recidivism percentages, and those are over two different
21 time frames for the Static-99. There's one for five
22 years and there's one for ten years, and in order to get
23 those numbers, those risk -- those estimated risk
24 percentages, we have to compare Mr. King to one of four
25 different norm groups that have been established for the

1 Static-99. And so there are actually four different norm
2 groups or comparison groups for the revised Static-99R
3 and you might say they are on a continuum from the
4 lowest risk to the highest risk offenders. And when I
5 wrote this report in 2010, I determined that Mr. King
6 was most like and most comparable to the high risk norm
7 group.

8 There's what's called -- the four groups are
9 called the routine group. That's the lowest risk group.
10 The treatment referred group would be the next higher
11 risk group. Then there's the highest risk group and then
12 there's what's called the nonroutine group, which is a
13 combination of the treatment group and the high risk
14 group that's sort of in between. And it was my
15 conclusion that because of Mr. King's -- you know, his
16 history, his five convictions for sexually motivated
17 crimes, the fact that he had already been precertified
18 twice by other evaluators, that he had been retained
19 beyond his release date, because of his potential for
20 sexual dangerousness and because of the admissions that
21 he made to Doctor Graney and Doctor Bazerman, I felt
22 that he belonged in the -- he was most like and most
23 comparable to the high risk group, and based on his
24 score of eight comparing to the high risk, high needs
25 group that that group -- that the offenders in that

1 group that scored an eight that were most similar to Mr.
2 King, they had a recidivism rate of 45 percent in five
3 years and 55.3 percent in ten years.

4 Q Now, those percentages, those don't necessarily
5 speak to Mr. King's recidivism, is that correct?

6 A That's correct. Those are the group -- the
7 results of the estimated recidivism rates for the -- the
8 group of offenders that scored an eight for which the
9 Static-99 was originally developed.

10 Q Doctor Zinik, I'd like to -- if you could turn a
11 few pages to page 27 of that same report, what is that?

12 A That's my scoring summary sheet for the
13 Static-99R on Mr. King.

14 Q Can you just please explain how the scoring of
15 this one particular actuarial instrument was done?

16 A Okay. All right. Well, you can see that there
17 are ten items.

18 Q And, Doctor Zinik, we'll put that on the screen
19 for you.

20 A I got it.

21 Q Okay. Just go through these briefly and explain
22 why, if at all, those are important to the scoring
23 process.

24 A Okay. All right. Well, so this is the
25 Static-99R, and there are ten items, and I scored Mr.

1 King, and item one is based on his age and because
2 he's -- actually he's now 53, he would receive a minus
3 point because you can see the age span 40 to 60, you get
4 a minus point, and the reason for that is that as
5 offenders age, you know, beyond their 30s and 40s, they
6 begin to, you know, statistically show a decrease in sex
7 offending. So Mr. King gets a minus one point for that
8 item.

9 Item number two is what we call the single item,
10 and that's defined as never having been married or
11 cohabited with a partner for at least two years. And
12 even though Mr. King's been married twice, if you look
13 at the time frame that he was in the community, he would
14 not have the opportunity to have lived with his --
15 either of his partners, either of his wives for at least
16 two years -- he reoffended quickly, and so he gets one
17 point on that item even though he's been married twice.

18 And the point of that item is that what often
19 happens with sex offenders is they have intimacy
20 deficits. They're not able to maintain extended intimate
21 relationships like a marriage or a cohabitating
22 relationship with a partner. Even when they get in those
23 relationships, they end quickly because of their sexual
24 deviance or the fact that they lack the skills to
25 maintain that kind of relationship, and I think that's

1 reflective of Mr. King.

2 Moving on to item number three, conviction for
3 index nonsexual violence and -- let's see. I scored a
4 zero on that item, and the reason for that was because
5 the index offense is the current -- is the most recent
6 sex offense, which would be the 1988 conviction. That
7 would be his index sex offense, and he -- because that
8 offense was described as a sexually motivated offense by
9 Mr. King in the presentence investigation report, I
10 actually interpreted that offense to be a sexual offense
11 rather than a nonsexual violent offense. That's how I
12 scored it.

13 THE COURT: Doctor, is it the index offense
14 because it's the most recent?

15 THE WITNESS: Yes.

16 THE COURT: I see.

17 A So item four, the conviction for nonsexual
18 violence prior to index, and in that case if we look at
19 Mr. King's history, he was convicted -- his convictions
20 in '78 and '83 were -- let's see. I think they were --
21 convictions in '75, '78 and '83 that were, you know, the
22 qualifier. The sexual violence was not included in the
23 description of the charge. I scored him a point on
24 nonsexual violence prior to index.

25 Number Five is prior sex offenses. And, by the

1 way, in the scoring of the Static-99, it is possible to
2 count a prior sex -- a prior offense as both a sex
3 offense and a nonsexual violent offense. A kidnapping,
4 for example, for sexual purposes can be -- it may look
5 like -- so to speak, but the way the scoring rules were
6 written -- but if you are convicted of, say, kidnapping
7 for sexual purposes, you would count that -- as both
8 sexual offense and a nonsexual violent offense.

9 So if you count up all his charges, he has seven
10 charges and seven separate convictions. Now, once you
11 get over six charges and four convictions, you get a
12 score of three. This item five, prior sex offenses,
13 that's the only item -- unfortunately, it's not very
14 clear by the scoring sheet here, but it's the only item
15 at which you can score zero, one, two, or three points.
16 All other items are scored zero or one point, but prior
17 sex offenses you can score up to three points on that
18 one item, and the reason for that is it make sense
19 because, again, it's the -- it's that persisting of
20 reoffending, the more frequently you commit new sex
21 offense, the more -- you know, the higher your score on
22 that item and it shows that you don't -- you just keep
23 doing it and you have more charges and more convictions
24 and so your score goes up.

25 Okay. Item six, if you have four or more

1 sentencing dates prior to your index offense, it doesn't
2 matter what -- whether they were sexual or nonsexual
3 crimes violent crimes or nonviolent crimes. You get a
4 point on that item, and that just shows, you know, more
5 criminal apt amount that -- if you have four prior
6 arrests prior to your index -- and Mr. King's fifth sex
7 offense, his index offense in 1988 is his fifth -- was
8 sexually motivated offense, so he's got four prior
9 that -- and then he's also got a conviction for
10 possession of marijuana, so he's got enough prior to
11 qualify on that item and get a point.

12 Okay. Any convictions for non-contact sex
13 offenses, this is item seven. Now, this refers to
14 non-contact sex offenses including sexual exposure,
15 window peeping, possession of child pornography, sexual
16 offenses that do not involve contact with a victim. And
17 because Mr. King was convicted of two counts of sexual
18 exposure as a juvenile in '94, it's important on that
19 item juvenile and adult offenses count on Static-99.

20 And moving on, number eight, nine and ten are
21 the -- number eight -- see, all those victims are
22 strangers. A stranger is defined as a victim who --
23 victim -- has known less than 24 hours, and all the
24 victims were strangers. And I'm sorry I skipped around
25 there. Number eight is unrelated victims.

1 Nine is stranger victims, and the idea is that
2 these items separate the incest offenders from nonincest
3 offenders, and the reason that's important is because
4 the research shows that incest offenders who were --
5 offenders who only molest or assault victims within the
6 family that they are related to, they have lower rates
7 of recidivism, and the reason is because incest
8 offending is typically not motivated by -- incest
9 offenders are less likely to qualify for a paraphilia
10 diagnosis.

11 There are other situational factors or
12 opportunities in this case, factors that are more likely
13 to come into play with incest offending. So when you go
14 outside the family and molest or assault non-related
15 victims, you're moving beyond the lower risk group of
16 incest offenders, and if you offend against stranger
17 victims, the recidivism studies show that offenders who
18 target strangers have the highest recidivism rate,
19 higher than acquaintance victims or unrelated and then,
20 of course, higher than incest victims -- again, that may
21 seem like -- that stranger victim is going to be an
22 unrelated victim, so -- but this is the way the scoring
23 rules have been written, and if you understand the sort
24 of hierarchy of recidivism related to victims, it makes
25 sense -- lowest risk acquaintance victims who are not

1 strangers, next highest risk -- and stranger victims are
2 highest risk offenders.

3 And the next item is male victims, and he has no
4 male victims, so he gets a zero on that item. So his
5 total score would be eight.

6 Q And what -- looking at the lower part of that
7 scoring summary there, the second box there, how does
8 the eight translate to that part?

9 A Anything above a six would be determined to be
10 high risk.

11 Q What does the term interrater reliability mean
12 to you?

13 A Interrater reliability, what that means is if
14 you take two evaluators and you have them rate the same
15 case on the Static-99, for example, or any test or risk
16 assessment instrument, unless they come up with the same
17 or nearly the same score -- in other words, when a scale
18 has high interrater reliability, that means that
19 different evaluators usually arrive at the same or
20 nearly the same score for the same case.

21 Q And is there -- does this particular instrument
22 have -- what's the interrater reliability would you
23 consider?

24 A You know, I don't know the numerical value of
25 the interrater reliability. I know it's high enough to

1 be considered -- it's not 100 percent, because sometimes
2 you do the scoring different. You know, different
3 evaluators will score the same case differently and they
4 may be a point or two apart, but usually they are only a
5 point or two apart, so I know it has -- good enough
6 interrater reliability.

7 Q All right. Doctor Zinik, turning back to page
8 22 of that same report, I don't want you to go through
9 and individually score the other instruments you used,
10 but I would like you to refer back to page 22 briefly
11 and just summarize please, briefly, the score that you
12 came up with on the other two instruments.

13 A Okay. On the Static-2002R, Mr. King scored a
14 nine. That placed him in the high risk category, and on
15 the MNSOST, he scored 16, which placed him in the
16 highest risk category. That category is called refer for
17 civil commitment evaluation level, and these -- what's
18 significant to me about that is it's not unusual that
19 you get an offender who has -- ends up with different
20 scores that place him at different risk levels on those
21 three different instruments. He may be high on one and
22 low on the other or moderately low on one and high on
23 the other or something like that, and then you have to
24 look and explain why that is and what do those different
25 instruments tab or not tab in this particular offender

1 which identified where their areas of risk are.

2 In Mr. King's case, he scores high risk across
3 the board on all those, and I think that's significant
4 and it shows there's consistency in the way that he
5 ranks on those actuarial --

6 Q Doctor Zinik, thank you. Are there any other
7 factors that you considered besides these actuarial
8 instruments in reaching an opinion as to whether he will
9 have serious difficulties in refraining from --

10 A -- some other pieces to the risk assessment
11 evaluation. I look at dynamic risk factors. Actuarial
12 scales measure what we call static risk factors. Those
13 are historical things characteristic of the case. Often
14 you can get them out of the records or off a rap sheet.
15 You don't always have to interview. Usually there's
16 enough information to score them without interviewing
17 the client. They are historical matters of fact related
18 to history. They're unchangeable and therefore they're
19 considered static risk factors.

20 We have dynamic risk factors, sometimes referred
21 to as psychological risk factors. These are aspects of
22 an individual's personality and psychological makeup,
23 and they're called dynamic because they can change and
24 they are often used to design treatment intervention so
25 that we know that part of the -- of sex offender's range

1 is to alter dynamic risk factors and improve the
2 person's function on those. So I looked at dynamic risk
3 factors.

4 There's a couple studies for evaluating dynamic
5 risk factors. There's an instrument called Stable 2007,
6 and even though I wasn't able to score --
7 instrument because Mr. King is incarcerated and the
8 instrument was developed on sex offenders in the
9 community, I was at least able to evaluate him on some
10 of those items -- as dynamic risk factors, and I also
11 used a new scale called the SRA-FV. It's called
12 Structured Risk Assessment-Forensic Version, and that
13 has been designed to evaluate dynamic risk factors of
14 sex offenders, and I used that in my second report.

15 And then I also evaluated Mr. King on the
16 psychopathy checklist or what's called also PCL-R to
17 determine his level of psychopathy.

18 Q What were the results of that, if any?

19 A The psychopathy checklist is designed to measure
20 the psychopathic percentage. There's 20 items. It's a
21 very well-used, well-validated instrument. It's not a
22 risk assessment instrument. I mean, it doesn't predict
23 risk or -- it's not specifically designed for sex
24 offenders, but there's some good studies that shows that
25 sex offenders who do score high in psychopathy have

1 higher rates of recidivism. These are offenders who have
2 psychopathic type personalities -- and they manipulate
3 others for their own personal gain and, you know, they
4 lack remorse and they're kind of thrill seekers and so
5 on. That's the profile of the psychopath.

6 Mr. King got a score of 33 out of 40 on the
7 psychopathy checklist, which is a high rate of
8 psychopathy. And I don't remember exactly what the
9 percentage was. I have to look that up in my records
10 real quick here, but it placed him in the 94th
11 percentile score, and that's considered very high.

12 Q -- dynamic risk factors. What, if any, risk
13 factors did you consider with regard to Mr. King?

14 A Those are listed on at least my first report on
15 page 24. These are from the Stable 2007. These are
16 factors that have been shown to be, you know -- related
17 to sex offender recidivism, and some of these were hard
18 to evaluate because I hadn't interviewed Mr. King yet,
19 but antisocial influences, you know, we know that
20 offenders who have other serious association -- and
21 friends who kind of circulate among other criminals and
22 have those kind of associations tend to have higher rate
23 of criminal activities.

24 And, you know, at the very least, we know that
25 Mr. King has been abusing narcotics in prison, he --

1 getting heroin and different narcotics in prison, so
2 he's involved with that -- those kind of social
3 influences.

4 Intimacy deficits is another dynamic risk factor
5 that could -- and, you know, experienced with
6 relationships, but I think that I would characterize Mr.
7 King -- at this point, he's never been able to maintain
8 a long-term healthy intimate relationship with a
9 partner. He's been out in the community a few times.
10 He's had opportunities to do that. He's been married a
11 couple times, but he always reoffends and those
12 relationships get destroyed, so I think there is a
13 dynamic risk factor that applies to him.

14 There's another one called sexual poor sexual
15 self-regulation, and I think this would apply to Mr.
16 King because of the frequency that he's reoffended. He
17 has not been able to control his sexual deviance. He's
18 talked about -- I've said many times already about how
19 he feared he was going to get out, do it again. He
20 discussed that with Doctor Graney and Doctor Bazerman --
21 would be an example of poor sexual self-regulation.

22 He's demonstrated poor cooperation with
23 supervision when he's been out in the community on
24 probation and parole. He drinks and uses drugs, and I
25 assume that those -- that he was prohibited from doing

1 those things while he was on probation or parole
2 typically. I haven't seen his -- and conditions of
3 probation or parole, but usually that is one of the
4 conditions. The -- condition is not to drink alcohol or
5 use illegal drugs or engage in criminal activity, but he
6 did those things and he placed himself in high risk
7 situations by following women and assaulting women
8 again. And so those are some of the dynamic risk
9 factors.

10 Q What does the term protective risk factor mean?

11 A There are some protective risk factors which
12 lower the risk of recidivism. These include being very
13 elderly, because we know that advanced age, you know,
14 statistically speaking, sex drive decreases, their
15 levels of testosterone decreases as they age into their
16 60s and 70s and so on, and sex offenders reoffend less
17 often as they get into their 60s or 70s. That's a
18 protective factor.

19 Having lived in the community for a significant
20 period of time without engaging in criminal behavior --
21 so it's, you know, a transformation, and that the
22 offender has reformed and changed his ways, changed his
23 lifestyle. Mr. King has never been able to live in the
24 community for any length of time. Since he was about 17,
25 he's only had about a total of -- it's a little hard to

1 know exactly -- figure it out, but it's something likely
2 to five years in the community total. If you added all
3 the time together, he's only spent that much time in the
4 community since he was about 17.

5 And then the last protective factor would be
6 having some kind of physical disability or some kind of
7 life-threatening disease that would shorten his life
8 timespan than would reduce the amount of time that he
9 could reoffend or physical disability that would reduce
10 his physical ability to reoffend, but none of those
11 things apply to Mr. King. None of these protective
12 factors apply to Mr. King.

13 Q Thank you, Doctor Zinik. Just a few more
14 questions. With regard to your overall opinions, what
15 would you have to say with regard to whether he would
16 experience serious difficulties continuing refraining
17 from sexually violent conduct or child molestation if
18 released?

19 A I believe that he would. I'm very concerned
20 about Mr. King. I'm very concerned about -- particularly
21 about the statements that he made that he was a
22 hibernating bear and he was going to get out, wake up
23 and get out in the community and reoffend and, you know,
24 be forced to feed that bottomless appetite that he
25 described and but he may -- that he may actually kill

1 his victim. I know he's recanted those statements, but
2 I'm very concerned about those statements.

3 I think once those statements are made, you
4 just -- you have to take those seriously and, in fact,
5 in the world of risk assessment, there are some things
6 that are considered clinical override and that increase
7 risk of recidivism, and one of them is the stated
8 offender -- intent for sexual assault when they get out.
9 He has said that many times over decades, but most
10 likely clearly just two years ago in 2009, and I
11 understand he's recanted that, but I'm not convinced
12 that it was all a story that he made up. So I'm just
13 very concerned that he gets out and commits other
14 sexually violent crimes that would end up -- could end
15 up being fatal. And I think they meet all the criteria
16 as a sexually dangerous person.

17 MR. LOCKRIDGE: Thank you. I have no further
18 questions.

19 THE JUDGE: Why don't we take our afternoon
20 break since it is 2:30? Will ten minutes be sufficient?
21 We'll reconvene at 2:40.

22 (Whereupon off the record.)

23 THE JUDGE: Mr. Bell?

24 MR. BELL: Thank you, Your Honor.

25 EXAMINATION

1 BY MR. BELL:

2 Q Good afternoon, Doctor Zinik.

3 A Good afternoon.

4 Q I'm not as well-versed in the use of the
5 computer display and so forth, so I may ask you to refer
6 to the notebook, if that's okay. It might make it a
7 little easier for everyone. You indicated in your
8 earlier testimony -- we were looking at your curriculum
9 vitae. It's Exhibit Six, if you want -- Government's
10 Exhibit Six, if you want to get it and look at it.

11 Talking about your educational background, you graduated
12 from Stanford University with a BA in psychology,
13 Harvard University with a master's in counseling and
14 consulting psychology, UC-Santa Barbara with Ph.D in
15 counseling and education. Do you have any sort of formal
16 fellowship type training in forensic psychology?

17 A No.

18 Q So you have never completed a fellowship with an
19 accredited program in forensic psychology or anything
20 like that?

21 A No, I have not.

22 Q You're not Board certified in forensic
23 psychology?

24 A I'm not.

25 Q And you indicated that this is the first

1 evaluation you have conducted for the government or it
2 was the first one -- it's not the only one, now, but
3 when you were asked to do this, it was your first
4 evaluation, is that correct?

5 A Yes.

6 Q Okay. Prior to conducting the evaluations in Mr.
7 King's case, had you had any specific training related
8 to doing a forensic evaluation, not generally which
9 we've talked about or you have talked about, but just as
10 it relates to the Adam Walsh Act?

11 A Not other than documents that were sent to me,
12 you know, about the statutes. I hadn't attended any
13 training specifically about the Adam Walsh Act, no.

14 Q And as we sit here today, have you done any
15 training since you did Mr. King's original evaluation?

16 A Specifically about the Adam Walsh Act? No.

17 Q And you talked about your understanding of the
18 statutes and that sort of thing, so I'm not going to go
19 back into that. Would you agree that if Mr. King does
20 not suffer from a serious mental illness, abnormality or
21 disorder, he can't be a sexually dangerous person under
22 the act? Would you agree with that statement?

23 A Yes.

24 Q Okay. Now, you're doing this as a consultant.
25 You indicated you had done work for the State of

1 California. You have a private practice. I assume you're
2 being compensated to be here today, is that correct?

3 A Yes.

4 Q What is your hourly rate for your testimony here
5 today?

6 A Two hundred fifty dollars.

7 Q Okay. And in the last year -- you have said you
8 do forensic evaluations on a regular basis. In the last
9 year, can you give us an estimate of how much income you
10 have made from doing forensic evaluations?

11 A In the past 12 months, you mean?

12 Q Yes, sir.

13 A You know, I don't have an exact amount, but, you
14 know, I'm going to estimate it might be around \$200,000.

15 Q Okay. So it's a fairly lucrative profession?

16 A I would agree with that, yes.

17 Q You indicated this is your first time testifying
18 in Federal court.

19 A Correct.

20 Q And you've testified any number of times in
21 courts of California and courts up in Washington, I
22 assume.

23 A Yes.

24 Q Now, you indicated in your testimony that when
25 you're given a case as an example by the State of

1 California, at least in one way that you do it, you're
2 considered an independent evaluator. You explained that
3 you just make a determination independently whether a
4 person should be detained under their act or not, is
5 that correct?

6 A Yes.

7 Q Now, when you were asked to look at Mr. King's
8 case back in 2010, he had already been precertified by
9 two forensic evaluators at that point in time, is that
10 correct?

11 A Yes.

12 Q And you had access to their reports when you
13 completed your report in evaluating Mr. King, is that
14 right?

15 A Yes.

16 Q Okay. What was your charge as far as looking at
17 his case? Were you asked to evaluate it, come up with a
18 determination that he was a sexually dangerous person,
19 or did they say look at it and tell us what you think?

20 A The latter.

21 Q And tell us what you think --

22 A I've never been instructed to reach a particular
23 finding or conclusion, and, in fact, several of the Adam
24 Walsh cases that I've evaluated this past year I've
25 determined they did not meet the criteria as a sexually

1 dangerous person.

2 Q In those cases, were you acting as a
3 precertifying evaluator, or had they already been
4 precertified and you were looking at 'em as a forensic
5 evaluator as you did with Mr. King?

6 A My understanding was I was playing the same
7 role. They had already been precertified and I was the
8 forensic evaluator. I think all the cases that had been
9 sent to me, they have all been precertified is my
10 understanding.

11 Q Okay. Now, it appears from your testimony that
12 you have done most of your work under the California --
13 I guess it's sexually violent person or however y'all
14 designate it out there. Tell The Court, if you would,
15 what the difference is between California's statute and
16 Federal statute.

17 A Okay. The California statute has three -- three
18 elements. The first is that the offender has to have
19 been convicted of a qualifying sexually violent crime,
20 and there's a list of penal codes and sexual crimes that
21 are able to qualify in that regard. There's only about a
22 dozen or so.

23 The second element is very similar to the Adam
24 Walsh Act. They must have a mental illness or disorder
25 that causes them serious volitional impairment, and that

1 increases their risk of committing sexually violent
2 crimes.

3 And the third element is that they -- they
4 are -- must be considered likely to commit a sexually
5 violent crime in the future and -- is defined such that
6 it does not necessarily mean they have to be more likely
7 than not or 50 -- you know, greater than 50 percent that
8 that is not the criteria.

9 Q Let's look at the exhibit. I believe it's 56,
10 the timeline which you testified you created in
11 anticipation of your testimony here today. Do you have
12 that in front of you?

13 A Okay.

14 Q I'd like to go through some of the testimony you
15 gave in reference to these incidents that you have
16 pointed out in the timeline, starting out with the early
17 history. I guess it's the second entry there, 1971-'74,
18 age 12 to 15 indicates -- your statement in there --
19 he's seen by various doctors in Fairfax County for
20 sexual exposure and obscene phone calls.

21 Other than the police record that we looked at
22 earlier related to the incident of exposure in 1974,
23 your source of other information about doctors and
24 sexual exposure and obscene phone calls, that comes from
25 the presentence report that was prepared in this case,

1 isn't that right, in 1988?

2 A I think that -- I'd have to check, but I think
3 there was also information about that in the record from
4 the treatment at Phipps Clinic in 1976. I think those
5 were the two sources where that came from.

6 Q And in the presentence report which is -- if you
7 need to look at it, it's Exhibit 23 -- there's a
8 statement in there on page 858, Bates stamp page 858 at
9 the top --

10 A Okay.

11 Q You have that?

12 A Yes.

13 Q -- where it's talking about Mr. King's history,
14 and I guess his mother was reporting this information to
15 the probation officer and it was reported that he was a
16 chronic liar, at times unable to tell the truth. This
17 goes all the way back to his childhood is what that
18 basically is saying, isn't that correct?

19 A Yes.

20 Q Okay. Now, the next incident that you discussed,
21 if you look at the timeline, it's April, May, 1974 time
22 frame, and there was a bit of confusion about the number
23 of counts and convictions. We only had -- police record
24 related to the one incident with the two young girls, is
25 that correct?

1 A Yes.

2 Q Now, he was found guilty or pled guilty to that
3 incident and was put on probation. Other than that
4 record -- conviction, there are no other documented
5 cases by way of police record, convictions in court or
6 anything like that of exposure, is that correct?

7 A There's no police record. Well, the police
8 records from that early incident -- there are references
9 to the fact that he may have exposed himself in other
10 instances.

11 Q Well, but I'm talking about post 1974.

12 A Okay.

13 Q Other than the incident that Mr. King himself
14 has told various evaluators or mental health
15 professionals about, other than his own words, his own
16 statements, what I would call self-reports to make it
17 easy, his own self-reporting, there are no other records
18 of exposures on his part, isn't that correct?

19 A The only other thing I can think of is in the
20 record in the Phipps Clinic treatment in 1976, there are
21 references to two arrests.

22 Q Okay. But we don't know whether that's the '74
23 arrest and maybe a prior arrest or some other arrest. We
24 don't know, because it doesn't say, isn't that right?

25 A Well, it talks about two arrests that were

1 approximately a month apart and that he had a mental
2 health evaluation in between the two.

3 Q Right.

4 A And do you want me to find that?

5 Q Well, I'm going to look at that record in a
6 minute. We can look at that, but other than those two
7 instances which would have been the 1974 time frame,
8 there are no other records of any exposure by Mr. King,
9 isn't that true?

10 A Yes, that's correct.

11 Q All right. And in the 2009 interview when he
12 talked to Doctor Graney, he self-reported other
13 incidents of exposure and that kind of thing, but he has
14 since recanted all of those statements, isn't that
15 correct?

16 A Yes.

17 Q Now let's look at this incident related to the
18 next incident down -- and timeline in reference to the
19 1975 -- it appears that Mr. King reported that in 1975,
20 he was assaulted by a group of teenage boys after he was
21 caught exposing himself. Again, there's no record or
22 report or anything of that nature other than Mr. King
23 self-reported that incident in the 2009 interview, is
24 that correct?

25 A Correct.

1 Q Look at the next entry, October, 1975, age 17,
2 the abduction of a 19 year old female at knifepoint,
3 exposing his penis and so forth. There are some
4 discussions by the victim of what happened in that case,
5 is that right, in the police report which we looked at
6 earlier today?

7 A Yes.

8 Q In that case, she indicates she was fondled, he
9 asked her to touch his penis, but there was no injury of
10 any kind, isn't that correct? She wasn't harmed,
11 physically harmed, I should say, is that correct?

12 A I think that's correct, yes.

13 Q Okay. If you would, look at Exhibit Nine, which
14 is treatment notes from the Phipps Clinic. Government
15 Exhibit Nine, if you would, look at Bates stamp page
16 1506. Actually, 1505 starts with the attending
17 physician's discharge note.

18 A Yes.

19 Q Well, first off, tell The Court if you would,
20 what is a discharge note? When would a physician or a
21 psychiatrist or a psychologist enter a discharge note
22 into someone's record? When would that take place?

23 A When they are being released from the hospital.

24 Q So it's kind of the last interaction at least
25 from this particular stay in the clinic that he had, is

1 that correct?

2 A Yes.

3 Q Okay. I direct your attention to the next page
4 which is 1506. Last paragraph on that page states that
5 during the last three months of his hospitalization,
6 talking about Mr. King, he apparently experienced no
7 significant sexual urges to expose himself. Now, the
8 last three months of his hospitalization, apparently he
9 expressed no significant sexual urges to expose himself,
10 and the record does not reflect the criminal record
11 or -- other than his self-reporting, there are no other
12 times when he has been caught exposing himself, isn't
13 that true, since he was released from the Phipps Clinic
14 back in 1976?

15 A No. He exposed himself in 1983.

16 Q When did he do that --

17 A When he abducted -- this was -- he abducted the
18 victim. The car drove up with his friend driving the
19 car. He pushed the victim in the back seat of the car.

20 Q I think that's the 1978 -- the one you're
21 thinking of.

22 A No. That's 1983. Sorry. I'm getting confused
23 here. Excuse me. I think that was '75. Okay. Yes, that
24 was the 1975 case where he exposed himself. And your
25 question was?

1 Q Since he was released from the Phipps Clinic, --

2 A Okay. I apologize.

3 Q -- that would be the only -- since then he had
4 not had any criminal charges of any sort of exposure, is
5 that correct?

6 A Yes, you're correct. I was confused. Sorry.

7 Q I know these dates are confusing. They are
8 confusing to everybody. I'm trying to keep it relatively
9 straight, but it's not easy.

10 All right. If you go back to the timeline,
11 please, okay, the next incident was April 7, 1978, which
12 you testified about he was charged and convicted of one
13 count of attempted abduction, and you indicated that you
14 felt this was a sexually motivated offense. Now, there
15 was really no records about this offense, no police
16 report, nothing to really give us that information other
17 than Mr. King's self-reporting that it was sexually
18 motivated, isn't that correct?

19 A Yes.

20 Q Okay. And it's not necessarily so that all
21 abductions are sexually motivated. That's a true
22 statement, isn't it?

23 A Yes, it is.

24 Q Okay. Look at the next entry, the November 23,
25 1983 -- where Mr. King was arrested for simple assault

1 and carrying a dangerous weapon. Now, in that incident,
2 there were two other witnesses based on the police
3 report to the incident, and one of those witnesses was
4 her boyfriend, isn't that correct?

5 A You know, I'm not sure that -- there were two
6 other witnesses mentioned in the record, you're correct.
7 Whether they actually witnessed the attempted abduction,
8 I'm not sure whether they were present and witnessed
9 that, but the victim did run up to her boyfriend after
10 she was able to fight off Mr. King and he was present.
11 She was able to find him and the other witness is my
12 understanding.

13 Q I believe if we look at Exhibit 13, Bates
14 stamped page 1970 --

15 A Yes.

16 Q -- about midway through that paragraph, it just
17 talks about witness one ran to W2, her boyfriend, and W3
18 told them what had happened. So there were other --
19 apparently other people around based on the record. Is
20 that a true statement?

21 A Correct. I think they were around, but it's not
22 clear to me that they observed the crime being
23 committed. I know Mr. King told me in his interview that
24 he claimed the boyfriend was there the whole time, but
25 that's not clear based on the police report. I interpret

1 this to mean that the boyfriend was around somewhere,
2 but the victim was separated from the boyfriend at the
3 time that Mr. King attacked her and then she was able to
4 fight him off, he fled, and then she ran and found her
5 boyfriend and the other witness.

6 Q All right. Now, you were aware that at the time
7 that this incident occurred Mr. King was working as a
8 tree surgeon for -- I think it was Davy Tree Company.
9 You're aware of that, correct?

10 A Yes, I was.

11 Q And he had ropes and a stick with some nails in
12 it in his vehicle, and I believe he told you that those
13 were used for his work, isn't that correct?

14 A That's what he told me in his interview, yes.

15 Q Okay. And he also told you that the air pistol
16 and the handcuffs belonged to his stepson and that the
17 handcuffs were toys and they belonged to his stepson, is
18 that correct?

19 A Yes, that's what he told me.

20 Q And he was married at that time and had a
21 stepson, isn't that correct?

22 A I know he was married at the time. I'm not aware
23 of stepchildren, but that could have been true. I didn't
24 know about that.

25 Q Now, this discussion of a "rape kit" that you

1 testified about as it relates to this incident, that was
2 based on self-reported conduct or self-reporting to
3 Doctor Graney in the 2009 interview, correct? There's
4 no evidence of him saying it was a rape kit in any of
5 the police reports or anything like that that were done
6 contemporaneously with the offense, is that right?

7 A Correct.

8 Q Okay. Let's look at the February 19, 1988
9 incident on the timeline. Now, I believe you testified
10 with regard to the prior incident, the 1983 incident,
11 that there was no mention of money, and that was one of
12 the reasons why you concluded that it was a sexually --
13 well, one of the reasons you concluded it was a sexually
14 motivated offense, is that correct?

15 A Yes.

16 Q All right. In this particular instance, in the
17 February 19, 1988 case, in the police report there were
18 two mentions of money. He asked her do you have any
19 money and he asked her do you have a lot of money, and
20 you still determined that this was a sexually motivated
21 offense. Now, is the fact that he asked for money --
22 did you just discount the fact that he asked for money
23 in the 1988 offense, or are you basing the fact that it
24 was sexually motivated on his subsequent statements, you
25 know, self-reporting to the probation officer and that

1 sort of thing who did the presentence report? What are
2 you basing that on?

3 A Let me answer that. With respect to the 1988
4 offense, in fact, that is the only offense of the five
5 offenses in which there's any mention in the original
6 records of money or intent to rob. Mr. King has claimed
7 that that was the motivation for all his attempted
8 abductions. That's the only one out of the five where we
9 see any mention of money or attempt to rob. But you're
10 right, there were two references to do you have any
11 money, do you have a lot of money in that offense, and
12 so there certainly may have been some intent to rob as
13 well, but because of the statement that he made in the
14 presentence report about well, my real intent was to
15 commit a sexual assault, that's the basis of my opinion
16 that that was a sexually motivated assault, but perhaps
17 there was some motivation to rob in addition.

18 Q Okay. And just to point -- to point out the June
19 7, 1988 letter that he wrote to the judge, I'm assuming
20 that that letter was written prior to his sentencing.
21 This is, again, self-reporting by Mr. King about his
22 conduct and his motivation, isn't it?

23 A Yes, it is, and that's correct, prior to
24 sentencing.

25 Q And the November 5, 1991 -- the Bureau of

1 Prisons therapy note where he discusses his frustration
2 with his wife and -- and so forth, again, that is
3 strictly just self-reporting by Mr. King in his
4 motivations and what he's all about when he's talking to
5 that therapist, isn't that correct?

6 A That's correct. That statement though, I mean, I
7 do have more to say about that. I don't know if this is
8 the time, but you're correct, yes.

9 Q And in the April 9, 1993 incident when he was
10 actually charged with an infraction of making a sexual
11 proposal to someone in -- a female staffer where it's
12 alleged that he asked her to touch his penis, there was
13 no actual touching, correct?

14 A Correct.

15 Q At least the records do not reflect there was
16 any actual touching?

17 A There was no exposure or touching.

18 Q No exposure? No violence? It was strictly a
19 comment? Is that a true statement?

20 A Yes.

21 Q And based upon your review of the records, would
22 you agree that this is the only arguably sexual
23 infraction that he's incurred since he's been in the
24 Bureau of Prisons' custody?

25 A Yes.

1 Q And he's been there since 1988?

2 A Yes.

3 Q The September 22, 1997 record is again his
4 discussing his motivations and his feelings about
5 something to an evaluator or mental health therapist, is
6 that correct?

7 A Yes.

8 Q So a self-reporting type situation, is that
9 correct?

10 A Yes.

11 Q Same thing with the September 22, 2000 incident
12 where he talks about a history and aggressiveness, of
13 exhibitionism, again, he's talking about himself, his
14 self-reporting of these thoughts and actions and so
15 forth, is that correct?

16 A Yes.

17 Q All of these things that are said in the letter
18 are things that he is saying to the person he wrote the
19 letter to? There's no other record that he's, you know,
20 a hibernating bear who awakens to a desire to eat?
There's no evidence of that, that's he's done anything
like that while he's been incarcerated, is that correct?

23 A Yes.

24 Q It's just a statement that he made?

25 A Yes.

1 Q Okay. The July 31, 2009 interview he had with
2 Doctor Bazerman where he's talking about not receiving
3 adequate tools to control himself, unable to stop and he
4 talks about his prior offenses, all of these things are
5 things that he's saying to her in reference to his
6 motivation for those offenses, and they're
7 self-reporting by Mr. King, is that correct?

8 A Yes.

9 Q And the same would be true of the statements he
10 makes to Doctor Graney in the November 13, 2009 -- I
11 guess that's her report, but she interviewed him prior
12 to doing the report. All of these are statements that
13 he's made to her in relation to his motivation for the
14 offenses that he's committed in the past and things that
15 he's done in the past, isn't that correct?

16 A Yes.

17 Q And then finally, the last entry there, April
18 25, 2010, where he writes a letter and categorically
19 refutes everything that he told Doctor Graney in the
20 interview, that's him again telling someone about his
21 motivations, his -- what he's all about, is that
22 correct?

23 A Yes.

24 Q Okay. Doctor Zinik, if you would, I want to turn
25 our attention now to the diagnoses you that made with

1 regard to Mr. King. The first diagnoses was paraphilia
2 NOS, nonconsent. Now, you have reviewed what are
3 voluminous records of Mr. King related to his life and
4 his time in custody going all the way back to 1974, and
5 in those records, there are various evaluations by
6 mental health professionals throughout his life. You
7 looked at Doctor Graney's report, precertification
8 report, Doctor Bazerman's precertification report.

9 Throughout all of those evaluations and diagnoses
10 made by other mental health professionals, you three,
11 Doctor Graney, Doctor Bazerman and yourself are the only
12 ones that have diagnosed Mr. King with paraphilia NOS,
13 nonconsent, isn't that correct?

14 A Yes.

15 Q And he's had any number of other diagnoses made
16 over the years, isn't that correct?

17 A Yes.

18 Q Now, this paraphilia NOS, I'm going to call it a
19 label since it's not in the DSM.

20 MR. LOCKRIDGE: Objection, Your Honor,
21 assuming facts.

22 THE COURT: I'm not sure exactly what you
23 mean, Mr. Bell, when you refer to it as a label.

24 MR. BELL: Well, Your Honor, Doctor Zinik's
25 testimony earlier today was that paraphilia NOS,

1 nonconsent is not found in the DSM-IV-T-R, so I don't
2 choose to refer to it as a diagnosis. It is not a
3 diagnosis and -- can address this. It's not a diagnosis
4 under the DSM if it's not contained in the manual, so I
5 would not refer to it as a diagnosis. I'd refer to it as
6 label or condition or something like that.

7 THE COURT: I think as long as we all know
8 what you're talking about, I don't think it, frankly,
9 matters. I understand the point. The objection is
10 overruled.

11 BY MR. BELL:

12 Q The labeling of Mr. King with the condition of
13 paraphilia NOS, nonconsent, the nonconsent aspect of the
14 offense has to be for it to be a correct labeling -- has
15 to be the arousing part of the activity, isn't that
16 correct?

17 A Yes. It has to be the fact that the
18 nonconsenting aspect of the sex is what is the turn-on
19 or the arousing, what's arousing.

20 Q Now, there's a lot of discussion in the records
21 and in Mr. King's statements of the feeling of control.
22 Is it your opinion that that feeling of control or
23 wanting that feeling of control equates to the arousal
24 based on the nonconsent?

25 A To some degree, yes. I think, you know, when he

1 experiences this total domination and control over a
2 female, it's sexually arousing to him in this context
3 when he's committing a crime and he's got the victim
4 tied up and, you know, blindfolded and he's involved in
5 his ritualistic paraphilic behavior that he describes,
6 you know, the fact it's -- it's the control and the
7 domination and the power that is sexually arousing to
8 him.

9 Q Okay. And you agree that you must evaluate Mr.
10 King and determine whether he's currently suffering from
11 this serious mental illness, abnormality or disorder,
12 not something that may have occurred in 1983 or '88 or
13 sometime in between? It's got to be a diagnosis that's
14 current, isn't that correct?

15 A Yes.

16 Q Now, you testified that in every instance
17 related to Mr. King's prior criminal history starting in
18 1974 with the exhibitionism up through and including
19 1988 with the current offense where he was incarcerated
20 that in your opinion each one of those offenses was a
21 sexual offense.

22 THE COURT: Is that a question, Mr. Bell?

23 BY MR. BELL:

24 Q Do you agree with that statement?

25 A Yes, I do.

1 Q The 1988 offense, you indicated that you base
2 that primarily on the self-reporting of Mr. King, his
3 motivations based on the presentence report, correct?

4 A Yes.

5 Q The 1983 -- you based it upon the -- his
6 statements and then I guess the things that were present
7 in his vehicle and his person at the time that the
8 offense occurred, is that correct?

9 A Yes.

10 Q And then in the 1978 -- based strictly upon his
11 statements related to sexual motivation for the crime?

12 A Yes.

13 Q And then in '75, it was based upon the fondling
14 of the victim and asking her to touch his penis, is that
15 correct?

16 A And exposing his penis, yes.

17 Q And then in the 1975 incident, it was based upon
18 the self-reporting in the 2009 interview, is that
19 correct?

20 A Yes. The 1975 offense, there was also
21 information in the Phipps treatment records that Mr.
22 King reported having sexual fantasies and tying up
23 victims and raping them, so I also consider those
24 statements that were made after -- you know, shortly
25 after the '75 offense.

1 Q But, again, these are statements made by Mr.
2 King related to what his motivations --

3 A Yes, they are.

4 Q Now, you looked at Doctor Bazerman's report, and
5 I believe it's Government Exhibit -- it's 46. Yes,
6 Government Exhibit 46. Precertification report of Doctor
7 Ivonne Bazerman, do you have that in front of you?

8 A I do.

9 Q And you had access to that report prior to your
10 initial evaluation that you did of Mr. King, isn't that
11 correct?

12 A Yes.

13 Q The facts in that report, if you could -- as
14 related in that report, did any of the facts that are
15 related in that report particularly with regard to her
16 interview with Mr. King have a bearing on your diagnosis
17 of paraphilia NOS, nonconsent or your labeling of that?

18 A Yes.

19 Q Could you tell The Court what they are, please?

20 A Okay. Well, on the Bates stamped page 2383 which
21 is page three of the report, he says according to Mr.
22 King -- this is the second to the bottom paragraph.
23 According to Mr. King, sex offender treatment was not
24 and has not been effective due to his lack of
25 "ownership" of his issues. He acknowledged his behavior

1 is not appropriate but feels he has not received
2 adequate tools to control himself and is "unable to
3 stop". That was the statement that he made that
4 contributed to the diagnosis of paraphilia NOS,
5 nonconsent.

6 On the following page under substance abuse, he
7 reports how he used stimulants to enhance his alertness
8 as well as his sex drive, and I think here he's
9 referring to methamphetamines. He also reported -- this
10 is kind of a cross-reference you might say that --
11 Doctor Graney's report where he talked about using meth
12 to sexually enhance his behavior during his offending.

13 Under nonsexual criminal offense history, Doctor
14 Bazerman talked about Mr. King has two nonsexual
15 convictions in 1974 and 1978. However, based on this
16 writer's interview with Mr. King, this has changed. Mr.
17 King reported the motive behind both cases were of a
18 sexual nature. His intent was to sexually assault both
19 victims. Therefore, the case will be discussed in --
20 detail under the sexual offense criminal history.

21 Page five -- I mean, there's just more
22 statements.

23 Q Well, let me short circuit this a little bit. Is
24 it fair to say that other than the criminal history that
25 we've already reviewed and the records that we've looked

1 at, the remaining basis or underlying -- for your
2 labeling of Mr. King with paraphilia NOS, nonconsent
3 relate primarily to his statement, self-reporting of his
4 motivations, his activities and that sort of thing?

5 A Yes.

6 Q Okay. Now, you did an interview with Mr. King I
7 guess after you did your original report but before you
8 did your second report, isn't that right?

9 A Yes.

10 Q Okay. And in your interview with Mr. King, were
11 there any statements to the effect that the offenses
12 that he was involved with were sexually motivated? Did
13 he ever admit to you that they were sexually motivated?

14 A He admitted that his original sexual exposure
15 offense in 1974 as a juvenile -- that he did expose
16 himself. You know, I don't remember if he used the --
17 you know, he described that using words such as that was
18 sexually motivated, but, I mean, he did admit that he
19 committed those acts of exposure, but that was the only
20 offense in which he either admitted or applied that
21 there were sexual motivations.

22 Q Do you think it's important to your diagnosis or
23 labeling of Mr. King with PNOS, nonconsent that he's
24 only been cited for one infraction of sexual misconduct
25 since he's been incarcerated since 1988 and that did not

1 involve any sort of touching or exposure, it was simply
2 a comment -- how is he able to control these urges while
3 he's incarcerated?

4 A Well, he talked about -- in Doctor Graney's
5 report, he talked about using heroin as a way of
6 self-medication, but he had strong impulses to expose
7 himself to the female officers in prison, and the way
8 that he mediated those and controlled them was by using
9 heroin. He talked about how he used meth while he was
10 offending to enhance his sexual experience and he used
11 heroin to dampen his urges, his deviant sexual urges in
12 prison so he wouldn't sexually offend.

13 He talked about how there were -- there were
14 occasions in which he sort of suddenly exposed himself
15 but without really drawing attention to it so that he
16 didn't get written up for it, you know, like when the
17 female officers were doing a count or kind of walking by
18 and he would kind -- you know, he would move in such a
19 way as to possibly expose himself but not draw the kind
20 of attention that he might otherwise. So based on that
21 information, this was a way that he controlled himself
22 in custody.

23 Q But there's no record in the disciplinary
24 infractions that he's had where he's ever been cited or
25 written up for exposure or written up for anything of

1 that nature, is that correct?

2 A That is true. Of course, we have many examples
3 of getting written up for use of narcotics and alcohol
4 and so on, but nothing other than the '93 incident
5 regarding sexual misconduct.

6 Q Now, you read the record, and it indicates that
7 Mr. King is bisexual and had a homosexual relationship
8 while he was incarcerated, isn't that correct?

9 A Yes.

10 Q And he's never been written up or there's never
11 been an infraction or a charge against him for having
12 any sort of sexual misconduct with a male while he's
13 been incarcerated, isn't that correct?

14 A Yes.

15 Q Now, in your August 1, 2011 report, the one you
16 did after you interviewed him, you describe him as a
17 pathological liar. I believe that's your words exactly.

18 A Yes.

19 Q And you cite records dating back to 1976 at
20 least indicating that he was an extremely skilled liar
21 and manipulator and malingerer and used the system to
22 his advantage, isn't that correct?

23 A Yes.

24 Q How do you reconcile the fact that you find him
25 to be a chronic liar and malingerer and so forth with

1 the fact that you're using his own statements, his
2 self-reports to find that these crimes were sexually
3 motivated and so on and so forth? How do you reconcile
4 the two?

5 A Okay. Just to explain quickly, the term
6 pathological liar, I didn't invent that term. That's a
7 clinical term. If you look at the psychopathy
8 checklist, the PCLR, that's item four on the psychopathy
9 checklist. You actually -- it's -- you know,
10 pathological lying is item four, and you give 'em a
11 score for that, and I scored Mr. King high on that item.

12 I understand what you're saying. You're asking
13 me if he's really a chronic liar, why do I believe the
14 statements he's made about committing sexually motivated
15 crimes, and the reason is that I believe -- I believe
16 those are true, and the reason I believe that is because
17 of the consistency that he showed in making those
18 statements. As we've already said, as far back as 1976
19 he was making those statements. He's made those
20 statements for 30 years, and he's made those statements
21 consistently, and those statements also I think are
22 consistent with his acts of criminal offending.

23 He specifically chose young women that were
24 peers of his in order to abduct and assault. If he
25 really was interested in robbing and gaining money, why

1 didn't he rob or assault men? Why didn't he rob or
2 attempt to rob elderly victims, older women, other
3 vulnerable type victims? He always picked young women,
4 and -- I lost my train of thought.

5 He made those statements when there was no
6 motivation for him -- in other words, the reason that
7 he -- he made those statements in 2009 to Doctor Graney
8 and Doctor Bazerman -- because he claimed at that time
9 he was afraid of getting out without resources and
10 support. He didn't face those same circumstances in the
11 prior years that he made similar statements. He was not
12 close to being released from prison. There was no risk
13 that he was going to be thrust out in the community
14 without support. You know, none of those circumstances
15 were present.

16 And he made several requests in the past for sex
17 offender treatment. He tried to get into the SOTP, Sex
18 Offender Treatment Program. I think it was around '94,
19 but he was not eligible because he was too far away from
20 his release date. Why would he do that if he didn't
21 really believe that he had a sexual problem that he
22 needed help for?

23 So, you know, I admit that I'm being somewhat
24 selective about my opinion about what I believe is true
25 and what isn't true, but I think that this -- there's

1 more data, so to speak, to support the opinion that
2 these statements that he has these sexual compulsions
3 and these offenses were sexually motivated -- I think
4 there's more data to support that than the other
5 position that they are not true.

6 Q But he has made statements, as an example, to a
7 mental health professional to cause them to diagnose him
8 with psychotic disorder or schizophrenia, hallucinosis.
9 I mean, he's had -- appears to me something in the
10 neighborhood of 15 -- or 15 different diagnoses while
11 he's been incarcerated, you know, giving -- self-report
12 hearing voices, self-reporting hearing -- having
13 alternate personalities, that sort of thing, and
14 subsequently it has been determined to be not true as he
15 self-reported those things.

16 So your testimony is that you believe the
17 statements he's made about the sexual offending, don't
18 necessarily -- well, you didn't diagnose him with any of
19 these other issues, so I assume you don't believe
20 that -- the evidence in the record for any of these
21 other offenses that he has been diagnosed with while
22 he's been incarcerated.

23 MR. LOCKRIDGE: Objection to form. Is there a
24 question in there somewhere?

25 THE COURT: I think he was just reaching the

1 end of it. Did you understand the question?

2 A I'd like you to please repeat the question.

3 Q I'll try. Basically you're saying that you
4 believe the statements he's made about offending, sexual
5 motivations, exposing himself, so on and so forth that
6 are in the record. You do not believe the statements
7 he's made in the past in the record that gave rise to
8 these diagnoses that you do not believe he's suffering
9 from currently. Is that a true statement?

10 A Yes.

11 Q So, in effect, you are picking and choosing the
12 things that you believe that he has said, isn't that
13 true?

14 A Yes.

15 Q Okay. That was the question. And your diagnosis
16 of exhibitionism that you made, that is included in the
17 DSM-IV-T-R. We established that. And other than the
18 records that we talked about previously and his actual
19 conviction for exposing himself back in '74, there's no
20 other evidence of that other than the statements that
21 he's made through the years related to his
22 exhibitionism, isn't that true?

23 A And the '93 request to the treatment provider to
24 touch his penis, yes, but that's the evidence.

25 Q That's the only other incident that can be

1 independently looked at other than his statements, isn't
2 that correct?

3 A Yes.

4 Q Now, you made a diagnosis of polysubstance
5 dependence. If you would, explain to The Court what the
6 term dependence means as far as polysubstance
7 dependence.

8 A Okay. Let me just find that page in my report.

9 The DSM does distinguish between substance abuse and
10 substance dependence, and substance dependence is a more
11 severe form of drug and alcohol abuse, and it's defined
12 as a cluster of symptoms characterized by continuous use
13 of a substance such as alcohol or drugs despite the
14 significant problems it causes.

15 Polysubstance abuse requires repeated use of a
16 substance or at least repeated use of at least three
17 substances for a minimum of one year that involves
18 compulsive drug taking. Behavior may result in physical
19 tolerance and withdrawal of the substance.

20 I think the fact Mr. King continued to use I
21 know heroin, I think marijuana and alcohol repeatedly
22 during his incarceration, he seems very addicted to it.
23 He continually got write-ups and in trouble for it, but
24 it didn't stop his behavior. You know, I think this
25 demonstrates substance dependence more than just

1 substance abuse.

2 Q Did you -- in any way to see if he's developed a
3 tolerance or if he has suffered from any withdrawal or
4 did you see any evidence in the record that he had
5 developed a tolerance or suffered from any withdrawal
6 from any of the substances that you diagnosed him as
7 being dependent upon?

8 A No.

9 Q Is there anything in the record that you're
10 aware of since he has been at FCI Butner I guess since
11 2009 indicating that he has been written up or has
12 received an infraction for any sort of drug offense?

13 A No. His last infraction was -- let's see -- May
14 26, 2009 for testing positive for opiates. Yeah, that
15 was the last one.

16 Q Now, you've talked about -- your testimony
17 earlier about the diagnosis of -- I'm going to call it
18 PNOS or paraphilia not otherwise specified, nonconsent,
19 and you said it's basically synonymous with another
20 diagnosis, paraphilic coercive disorder, PCD?

21 A Yes.

22 Q You agreed that it is not recognized or is not
23 found in the DSM-IV-T-R. Isn't it true that it's
24 basically recognized by a small group of forensic
25 psychologists that follow the teachings of Dennis Doren,

1 a psychologist in Wisconsin regarding paraphilia NOS,
2 nonconsent?

3 A No.

4 Q How widely accepted is that diagnosis?

5 A Okay. Well, I'm going to have to refer to my own
6 research project in one respect.

7 Q Well, has it been peer reviewed or published or
8 anything of that nature?

9 A No, it has not been published in a peer reviewed
10 journal. I did present -- give a presentation on it at
11 the ATSA conference last fall, and that is -- peer
12 review. You know, it was submitted for consideration to
13 the presentation committee and they accepted it, and I
14 was able to present on it at that conference, but, I
15 mean, I think there's other information besides my study
16 that shows that this is -- you know, it is a widely
17 accepted diagnosis.

18 Q Well, you indicated in your testimony that in --
19 1980 I guess was the original time that it was proposed
20 to be put into the DSM-III at that point and it was
21 rejected --

22 A Yes.

23 Q -- and was not put in the appendix as I
24 understand, is that correct?

25 A Yes.

1 Q And then, once again, there was a group that
2 proposed it to be put into the DSM-III --

3 A R.

4 Q R, revised?

5 A Yes.

6 Q And it was rejected, as you said, by a vote of
7 ten to four in 1986, isn't that correct?

8 A Yes.

9 Q My understanding is is that it was not even
10 accepted as a proposed diagnosis in the DSM-IV, isn't
11 that correct?

12 A Yeah. It was not proposed for the DSM-IV.

13 Q And it was not proposed for the DSM-IV-T-R, is
14 that correct?

15 A Yes.

16 Q And you testified that it has been proposed for
17 the DSM-V?

18 A Yes.

19 Q And you believe it will be in the appendix, but
20 you -- where does that come from? Where do you have that
21 information from?

22 A I think I got that off a DSM-V -- but, frankly,
23 I don't remember exactly. I just heard it kind of
24 through the grapevine.

25 Q But it was rejected by the DSM-V committee or

1 board once again, but it may be in the appendix is what
2 your testimony is?

3 A Yes.

4 Q And it comes out when? 2013 is the year?

5 A I think so, yes.

6 Q So as we sit here today in this courtroom, it is
7 not -- there's no diagnosis for PNOS, nonconsent, that
8 specific diagnosis in the DSM-IV-T-R?

9 A That's correct, yes.

10 Q Now, you're -- are you familiar with the -- I'm
11 sure you're familiar with the ethical codes that govern
12 psychologists. You're familiar with those, is that
13 correct?

14 A Oh, I've read them, but it's been a long time, I
15 have to confess. But I know about them.

16 Q Ethical code 9.01 states -- and I'll be happy to
17 provide you with a copy of it, okay?

18 MR. LOCKRIDGE: This will be Exhibit 22, Your
19 Honor, if I may approach the witness.

20 THE COURT: You may.

21 BY MR. LOCKRIDGE:

22 Q I've handed you what's been marked for
23 identification as Respondent's Exhibit 22. If you would
24 turn to -- find the page -- it's page 14 of 18.

25 A Okay.

1 Q -- it's about the third paragraph down --

2 A Okay.

3 Q The ethical code 9.01 which states psychologists
4 base their opinions contained in their recommendation
5 reports and diagnostic or evaluative statements,
6 including forensic testimony, on information and
7 techniques sufficient to substantiate their findings --
8 And then it refers to a second code, ethical code which
9 is 2.04, and that is on page five of 18, which states
10 the bases for psychiatric and professional judgment,
11 psychologist work is based upon established scientific
12 and professional knowledge of the discipline.

13 Now, how do you reconcile those two code
14 provisions with making a diagnosis of a "mental illness"
15 that is not found anywhere in the DSM-IV-T-R which --
16 agree with me is I guess the diagnostic Bible for
17 psychologists? How do you reconcile that, that you're
18 making a diagnosis based upon established scientific and
19 professional knowledge of the discipline?

20 A Okay. Well, I would start by saying that the
21 DSM-IV-T-R does not contain the whole universe of
22 scientific knowledge and research and information.
23 There's a lot of scientific knowledge, there's a lot of
24 clinical information that is not contained in the DSM --
25 manual. I think that there has been a longstanding

1 clinical and research interest in this paraphilia NOS
2 forced sex or paraphilic coercive disorder, if you want
3 to call it that.

4 There are some really eminent researchers around
5 the country right now who are studying it, including
6 Doctor David Thornton. There is some good PPG evidence to
7 support it, and by PPG evidence, I mean -- data that has
8 been collected using the penile plethysmograph. These
9 include studies of incarcerated rapists who, you know,
10 agree to submit to a plethysmograph evaluation. A
11 plethysmograph is a device that measures the erection
12 activity of a man's penis, and it's used in research on
13 sexual arousal, and there is some evidence that repeat
14 rapists respond differently to, you know, sexual
15 stimulus materials that involve forced sex and rape
16 activity.

17 You know, this has been a particularly spirited
18 debate the last year or two in the professional
19 community, and I think there's certainly a lot of
20 support for the existence of this type of paraphilic
21 disorder. Even though it has not been included in the
22 DSM, there's scientific evidence. There's research data.
23 There's some important experts around the field that are
24 advocating for it, so I think it is a reasonable,
25 clinical and professional, you know, opinion to make.

1 Q So in your mind, you are not violating any of
2 these code provisions related to making that diagnosis?

3 A No, I don't believe I am.

4 Q And you indicated in your earlier testimony when
5 you were talking about when it was rejected and how it
6 was rejected that it was a lot of political activity and
7 so forth, but there was also some very significant
8 concerns about diagnosing this disease, wasn't there?

9 A Yes, yes. It's hard to diagnose because there
10 are very few rapists that will admit to these urges and
11 feelings like Mr. King has. He's quite unusual in the
12 sense that he's been willing to talk about them. You
13 know, most sex offenders who are facing legal sanctions
14 are not honest and forthcoming about their private
15 sexual feelings and fantasies, so it's really hard to
16 gather -- you know, to kind of collect the data and do
17 the research and gather the information. You know, it's
18 controversial, and for good reason.

19 Q And, again, just to reiterate, as we sit here
20 today, it's not included in the DSM, so your diagnosis
21 is based upon other information out in the psychological
22 field or the universe of psychologists? It's not based
23 on the specific DSM-IV-T-R diagnosing tool that is used
24 in your profession?

25 A That is correct, yes.

1 Q Let me ask you one other thing. You mentioned in
2 your answer just a moment ago that there are clinical
3 uses for certain diagnoses, and I think you mentioned
4 that, you know, if it exists -- a clinical way of
5 looking at it, that sort of thing. Do you not believe
6 there's a difference between using a diagnosis in a
7 clinical sitting versus using a diagnosis in a courtroom
8 to commit someone civilly?

9 A I do believe there's a difference, yes.

10 Q And it's significantly more involved when you're
11 talking about civilly committing someone, isn't it?

12 A I would say the standard is higher, yes.

13 Q But you still believe that your diagnosis is
14 correct even in the setting that we're in here today?

15 A Yes, I do.

16 Q Now, you testified that you had given this
17 diagnosis in court previously in other situations, but
18 you also testified this is the first time you have been
19 in Federal court. So it would be the first time that
20 you've given this diagnosis in Federal court, isn't that
21 correct, under the Adam Walsh Act?

22 A Correct.

23 Q Okay. Let's talk about the risk assessment
24 tools. You state in your report that the standard of
25 professional practice -- and this is from your report.

1 I'm not sure exactly what page. You state in your report
2 that the standard of professional practice of sex
3 offender risk assessment is moving toward the use of
4 multiple actuarial risk scales and determine how they
5 lead to similar or divergent results. Is that related to
6 your testimony about whether someone scores the same on
7 all of the tests or whether they score differently on
8 one versus another one? Is that what you're talking
9 about there?

10 A Yes.

11 Q Okay. What you say is a standard in professional
12 practice, do you have any articles or any peer reviewed
13 articles or anything that you can point to that
14 indicates that that is the standard of practice in the
15 psychological field?

16 A I can point to the -- in terms of recommending
17 the use of actuarial instruments, that's in the ATSA
18 guidelines and you find that on the ATSA website, and I
19 do have a copy of those guidelines with me in terms of
20 recommending the use of actuarial scales for civil
21 commitment evaluations.

22 In terms of recommending the use of multiple
23 actuarial scales, I know I've heard Doctor Carl Hanson
24 recommend that. He's one of the designers of the
25 Static-99 and one of the founding fathers of risk

1 assessment you might say in the United States.

2 Q He's the one that basically told everybody to
3 quit using the Static-99 because it was no longer valid
4 a couple of years ago, isn't that right?

5 A Well, he told everybody to stop using the
6 Static-99 and replace it with using the Static-99R. Is
7 that what you're referring to?

8 Q Yes.

9 A Yes, the kind of new and improved version,
10 Static-99R, yes.

11 Q And all of these risk assessment tools, they
12 give you an estimate of both the relative risk and
13 absolute risk? Explain that again. I think you talked
14 about it earlier, but --

15 A Sure. The relative risk means kind of ranking
16 the offender compared to how other offenders rank on
17 measures of being low risk, high risk, moderate risk and
18 so on, and percentile ranking is also a measure of
19 relative risk, and so is the risk ratio that I have in
20 my table on page 22, my -- well, I'm looking at my
21 original report from October, 2010.

22 So those are measures of relative risk, and
23 what's important about those measures is they're not
24 influenced by base rates so that they're -- you can
25 compare offenders across different samples and kind of

1 make statements about their level of risk that are not
2 influenced by the -- the sample of -- population they
3 come from or the base rate of that sample.

4 On the other hand, the absolute measures of risk
5 are they do -- they are dependent on base rates, and
6 that's what the estimated recidivism percentages are in
7 my table here, and they change. You know, they're not
8 the same across different samples. We've got the four --
9 for the Static-99 we've talked about so that you can
10 have the same score but different estimated recidivism
11 percentages because you are, you know, similar or
12 different to a comparison group or the norm group that
13 most closely matches your case -- would have a specific
14 base rate that would be different from other samples.

15 Q But isn't it true that these actuarials -- and
16 you eluded to it in your testimony, that they're very
17 limited in what they can do with regard to an
18 individual's risk of reoffending. You know, they are
19 more useful in looking at groups of people and the
20 percentage that they would reoffend or not reoffend in a
21 particular period of time, isn't that true?

22 A Essentially, yes. I mean, I wouldn't say they're
23 very limited. I think they have what we call moderate
24 predictive accuracy. They do have limitations, but
25 they're useful enough to be used and they do provide a

1 starting point for the risk assessment, and they are
2 most useful in, you know, identifying your offender as
3 low, medium or high risk. And then you look at the rest
4 of the -- and all the idiosyncratic factors related to
5 the case and the dynamic factors and the protective
6 factors and so on before you reach your final
7 conclusion. So they're useful, but they do have
8 limitations.

9 Q But as a matter of caution, The Court should not
10 look at a Static-99R score and then -- as it's reflected
11 in a percentage and say well, Mr. King is in this group
12 and he scored this number, he's got a 45 percent chance
13 of reoffending or a 53.2 chance of reoffending? The
14 Court should not do that, should it?

15 A I agree with that. I think that's a good
16 cautionary statement.

17 Q And, well, along those lines, just to get
18 specifically your scoring on the Static-99R, you can't
19 tell, you know, the scoring -- this comparison group and
20 on the Static-99 you ended up with 45 percent of
21 offenders in that group would reoffend within five
22 years, 55 percent that will not, and then in a ten year
23 period, it was 53 point -- 55.3 would reoffend and 44.7
24 would not reoffend, but you don't know whether Mr. King
25 is going to end up in the 45 percent that would reoffend

1 or the 55 percent that would not. You have no way of
2 telling, isn't that true?

3 A Yes, it is.

4 Q Okay. The same thing would apply for the Static
5 2002R, you know, the percentages are a little bit
6 different, but it's the same principle. You can't as we
7 sit here today testify that he's got a 41 percent chance
8 of reoffending because you don't know whether he's going
9 to be in that group or in the larger group that doesn't
10 reoffend, isn't that true?

11 A Yes.

12 Q Now, you indicated earlier that you think you've
13 done about -- I think you said 500 risk -- well,
14 forensic evaluations, which I assume those included some
15 sort of risk assessment or reoffending assessment, is
16 that correct?

17 A Well, I think the question that I answered is --
18 was I was asked how many sex offender risk assessments
19 have I performed, and my estimate was approximately 500.

20 Q Do you have any idea how many of those risk
21 assessments that you completed, how many of 'em you were
22 right or wrong on?

23 A No, I don't.

24 Q Okay. Now, in talking about the determination in
25 the 99R and the Static 2002R specifically, to a certain

1 extent, they are discussed as being actuarial, in other
2 words, objective scales, but there is a subjective part
3 of it, isn't that true, and it's related to which
4 comparison group and particular offender ends up in --
5 that is a purely subjective decision made by the
6 evaluator, isn't that correct?

7 A Well, yes and no. I mean, yes, that is the case.
8 That was the case in my first report, but in my second
9 report I actually used another scale called SRAFV which
10 I scored which involves some subjective judgment in
11 scoring that scale, but once I arrived at my final score
12 on that scale, based on that number, it identified which
13 of the comparison groups I should use on the Static-99,
14 and it turned out to confirm my prior choice of the high
15 risk group.

16 Q But, again, there is a subjective element? In
17 other words, you have to look at the offender and make
18 determinations about whether the prior offense was a sex
19 offense or not? You know, I mean there are subjective
20 aspects to whether you put him in a particular group or
21 not, isn't that true?

22 A Yes, it is.

23 Q And you talked about the structured risk
24 assessment forensic version. Is that what you -- talking
25 about, the --

1 A Yes.

2 Q -- score that you gave him in your second?

3 A Yeah.

4 Q Now, you didn't evaluate Mr. King using that
5 tool in your first. Was that because you had not had an
6 opportunity to interview him, or what was the reasoning
7 behind that that you didn't use it the first time
8 around?

9 A It wasn't available yet. I hadn't been trained
10 in it yet.

11 Q So it's very new?

12 A Yes, it is.

13 Q Has it been peer reviewed? Is there any
14 empirical data related to its reliability or anything
15 like that?

16 A There is empirical data supporting its
17 reliability and validity. I'm not aware that it's been
18 published in a peer reviewed journal. I do know that
19 it's gaining acceptance, and in particular in California
20 it has been selected for, you know, all -- all sex
21 offenders that are paroled from the California prison
22 system have to -- there's kind of a short risk
23 assessment that is done on that group, which includes
24 the Static-99 and it also includes this SRAFV, so it has
25 actually been endorsed by the California Department of

1 Corrections as a dynamic risk assessment tool used on
2 all paroled sex offenders in California, but I'm not
3 aware that it has been published yet in a peer reviewed
4 journal.

5 Q So in your opinion, it's appropriate to sit in a
6 courtroom and use a tool that is -- as you understand
7 it -- don't know whether it's been peer reviewed or --
8 or peer reviewed in a peer reviewed article, you know,
9 in a publication in making a determination about whether
10 Mr. King should be civilly committed or not?

11 A Well, I do believe that it is gaining
12 acceptance. I actually was trained in it by -- you know,
13 there was an official California Department of Mental
14 Health training where all the SVP evaluators were -- you
15 know, we were all gathered together, and Doctor David
16 Thornton who created the instrument came and trained us
17 how to do it, so we got credit, you know, through the
18 Department of Mental Health, so it's sort of endorsed,
19 you might say, by the State Department of Mental Health.

20 I hear what you're saying about jumping the gun
21 and using it before it's been published in a peer
22 reviewed journal, but I think the way it's being
23 accepted and disseminated justifies the use of it at
24 this point.

25 Q Are you saying it's been accepted and -- but the

1 reality is it's being used in California. Is it being
2 used anywhere else that you're aware of?

3 A I understand that other evaluators doing Adam
4 Walsh case evaluations are using it now -- not the only
5 one, and I know there's going to be several
6 presentations about it at the ATSA conference coming up
7 later -- early November, so I think it is starting to be
8 used. I think it's being used by evaluators in
9 Washington State, so it's think it's starting to
10 disseminate.

11 Q There's one statement that you made in your
12 report, and I believe it's just an error, but it was a
13 statement that Mr. King's sexual offending began at age
14 12 and spanned 27, ended in 1988. I guess what I want to
15 clarify is that's 17 years.

16 A Oh. Did I do the math wrong?

17 Q Well, what I'm asking you, you're not testifying
18 or your report is not stating that he has continued with
19 sex offending for ten additional years while he's been
20 incarcerated? You're not trying to say that, are you?

21 A No, I'm not.

22 Q So it's 17 years?

23 A Yes.

24 Q All right. And if the offenses that took place
25 in 1978 and 1983 and 1988 were not sexually motivated,

1 in other words, if Mr. King's self-reports of a sexual
2 motivation are lies, are wrong, then actually his sex
3 offending would have covered a much smaller period of
4 time, isn't that correct?

5 A Yes.

6 Q You indicated earlier that the risk assessment
7 tools that you used have a moderate -- I think it was a
8 moderate success rate or impact. What do you mean by
9 moderate? I mean, how do you quantify the term moderate,
10 or is it quantifiable?

11 A Yes, it is. The term is moderate predictive
12 accuracy, and that term comes from -- all these risk
13 assessment instruments have -- you know, the statistical
14 analysis produces a number called the AUC index, which
15 stands for Area Under the Curve index, and it's really a
16 measure of hit rates, hits versus misses in terms of
17 correctly identifying the recidivist from the
18 non-recidivist, and so the -- the AUC index for all
19 three of these instruments is around .68 to .71,
20 something like that, and that's an improvement over
21 chance, which is .5.

22 Q So it goes from .5 which is flipping a coin to
23 .68 or a little bit --

24 A Well, it would go from .5 which is -- purely
25 random chance to one. You know, if you have a risk

1 assessment instrument that has an AUC index of one,
2 that's a perfect --

3 Q It's right every time?

4 A They're right every time, yeah, and but if
5 you've got one that's, you know, in the point -- you
6 know, the high .6 -- .68, .65 to .72 or 3, that's in the
7 moderate predictive accuracy range. That's where that
8 term comes from.

9 THE COURT: Doctor, let me ask you. Does that
10 mean that -- well, that would mean with -- obviously it
11 doesn't mean, I'm assuming, with respect to an
12 individual that there's, say, a 68 to 71 percent chance
13 -- I assume it doesn't mean that.

14 THE WITNESS: It doesn't apply to an
15 individual. What it applies to -- remember I talked
16 about risk assessment instruments are like sorting
17 tools. They help you sort the true recidivist from the
18 true non-recidivist, and so what that number means is
19 that the probability of randomly selecting a true --
20 that the probability that a true recidivist would have a
21 higher Static-99 score, for example, than a randomly
22 selected non-recidivist is, say, .71, something like
23 that.

24 THE COURT: Thank you. Okay. Mr. Bell?

25 MR. BELL: I'm sorry, Your Honor.

1 THE COURT: That's all right.

2 BY BELL:

3 Q So, again, not to belabor the point, but it
4 really is speaking to the group, not particularly an
5 individual? It's just a limited use tool that you use
6 in your overall assessment of what you believe is a risk
7 of reoffending, the risk assessment tools?

8 A Well, I think if you get -- you're right, we're
9 talking about group data, but I think if you get an
10 offender like Mr. King who gets high -- who scores in
11 the high risk level on all three of these scales, you
12 know, I think that tells you something about who he is
13 most similar to in terms of the group's -- you know, the
14 breakdown of offenders in the original study. That's
15 what it tells you.

16 Q Okay. And, of course, in scoring these risk
17 assessment tools, if you make a mistake as far as
18 whether an offense was a sexual offense or not a sexual
19 offense or if, you know, you determine that someone was
20 not married for more than a two year period of time and
21 they were and you didn't give 'em a point for that or
22 whatever, all of those things factor in? That's the
23 human error, I guess, or the subjective part of scoring
24 someone on these risk assessment tools?

25 A I would agree with that, yes.

1 Q And -- different categories, but it would apply
2 equally to the MNSOST or the Static-2002R or the
3 Static-99R? It's the same principle? Your evaluative
4 abilities are brought into play when you score someone?

5 A I would agree with that, yes.

6 Q Now the dynamic risk assessment that you did,
7 risk factors that you discuss in your report with regard
8 to Mr. King, I think you testified that you didn't score
9 him on a -- 2007 the first -- you didn't score him, but
10 you just used the criteria, I guess, to discuss his
11 case. Is that a fair statement?

12 A Yes.

13 Q Okay. And, of course, those factors are those
14 categories, social influences, intimacy, deficits and
15 self-regulation. All of those things to a large extent,
16 again, are based on self-reported behavior,
17 self-reported motivation, self-reported conduct that you
18 gleaned from interviews, notes from the record and that
19 sort of thing of Mr. King himself. Is that a true
20 statement?

21 A Well, not 100 --

22 Q Not 100 percent, but there was a factor that
23 involved self-reporting of Mr. King and his motivations
24 and so forth?

25 A They did involve self-report, yes, but they

1 weren't limited to that.

2 Q No, no.

3 A Yes.

4 Q I mean, I'm sure you took into account the
5 criminal history and so forth as well.

6 A Yes, that's correct.

7 MR. BELL: I don't have anything further, Your
8 Honor.

9 THE COURT: Thank you, sir. Mr. Lockridge?

10 MR. LOCKRIDGE: Can I just have a moment? We'd
11 like to redirect the witness -- rebuttal.

12 THE COURT: You may. How much time do you need?

13 MR. LOCKRIDGE: Just about 30 seconds, Your
14 Honor. THE COURT: Okay.

15 EXAMINATION

16 BY MR. LOCKRIDGE:

17 Q Doctor Zinik, you were asked questions a moment
18 ago about your diagnosis of exhibitionism and the
19 paraphilia diagnosis you rendered. Can either or both of
20 those diagnoses be rendered based on a person's current
21 urges or fantasies without exhibiting any conduct?

22 A Yes, yeah.

23 Q And so if a person -- hypothetically if a person
24 had exhibited exhibitionistic or paraphilic behavior in
25 the past, would it be possible to diagnose them based

1 only on current urges or fantasies in lieu of past
2 behavior?

3 A If you only had evidence of past behavior and no
4 current admissions, could you still make that diagnoses?
5 Is that the question?

6 Q Well, if you had evidence of current urges and
7 fantasies but no actual contact or exposure, could they
8 be diagnosed with exhibitionism?

9 A So the question is could exhibitionism be
10 diagnosed with no evidence of past behavior and actual
11 acts of sexual exposure but merely self-report that say
12 I have these feelings and I want to expose myself? Is
13 that the question?

14 Q Not quite.

15 A Sorry.

16 Q The question was with acts of past exposures and
17 only evidence of current urges and fantasies, could you
18 render an opinion of exhibitionism?

19 A Yes, you could.

20 Q All right. You were also asked questions again
21 about Mr. King's convictions, and I just briefly wanted
22 to ask you a few questions about those again. With
23 regard to his 1975 offense -- on the chart was listed as
24 seizing, transporting and detaining with intent to
25 defile a person. Do you recall where approximately the

1 evidence showed you that Mr. King met the victim?

2 A He met the victim -- let's see. She was walking
3 home from a high school football game.

4 Q And where do you recall, if anywhere, did he ask
5 her to go to?

6 A I think he just grabbed her and took her by the
7 neck and pulled a knife on her. I don't remember more
8 than that. I'd have to look at the police report.

9 Q Can I refer you to Exhibit 13, please?

10 A Okay. Sorry.

11 Q And the second page of that exhibit --

12 A Okay -- just get that in my binder, please.

13 Second page, okay.

14 Q -- which is Bates stamped 1970, at the top under
15 statement of facts, what does that say there?

16 A Okay. She says -- the victim reports while
17 walking to her auto, the defendant approached and asked
18 if she would walk him to the defendant's auto so the
19 police would not arrest defendant for being drunk.

20 Q So is it your understanding that the victim
21 asked him to -- he asked the victim to accompany him to
22 his auto?

23 A Yes.

24 Q And with regard to the 1978 offense -- excuse
25 me. With regard to the 1983 offense, do you recall the

1 circumstances of whether there was an automobile
2 involved in that incident?

3 A Yes. That was -- 1983 offense. That one -- he
4 also asked the victim if she would walk him to his car
5 and she said no, and then he told her not to scream or
6 he'd kill her and he tried to push her across the seat
7 of her own car, and she kicked him in the groin and
8 scared him off.

9 Q I think I referred you earlier to the 1983
10 offense which is Exhibit 13 that you just read.

11 A Yes.

12 Q Can you turn back to the second page of that?
13 Is that the 1983 offense there?

14 A Yes.

15 Q And is that the one where he -- in your words,
16 he asked her if she would walk with him to defendant's
17 auto?

18 A Yes.

19 Q All right. And in the 1988 offense, do you
20 recall whether there was an automobile involved in that
21 incident?

22 A Yes.

23 Q What do you recall about that?

24 A Let's see. Mr. King asked the victim do you have
25 any money, do you have a lot of money. He then ordered

1 the victim into his auto while still holding her and
2 still displaying his knife. So, yes, he tried to get her
3 into his own car.

4 Q Was that after he asked her for money?

5 A I think so, yes.

6 Q All right. Shifting -- you testified earlier
7 that Mr. King -- there's no record of Mr. King
8 exhibiting acts of exhibitionism while in his current
9 confinement since 1988, is that correct?

10 A Yes.

11 Q In your experience, does incarceration or the
12 fact that a person is incarcerated -- does that have any
13 weight with regard to whether they will sexually
14 reoffend?

15 A Yes. Usually -- usually being incarcerated
16 inhibits deviant sexual behavior and offenders are less
17 likely to act out sexually because it's easier to get
18 caught and punished, so typically they don't exhibit
19 or exhibit sexual deviant behavior less often in
20 custody.

21 Q All right. Doctor Zinik, was Mr. King's
22 self-report the only information you used when
23 determining whether the offenses were sexually related?

24 A No.

25 Q Without reiterating what you've already

1 testified to, what other factors, briefly, did you
2 consider?

3 A Just the fact that he targeted young women in
4 every case, there were no other types of vulnerable
5 victims, the frequency of reoffending, the evidence of
6 the rape kit that we've already talked about, the fact
7 that it was kind of a combined merged paraphilia with
8 his sexual exposure and there was prior evidence of
9 that, those things.

10 Q And did the -- to the extent you haven't already
11 testified, did the similarity of his behavior or acts
12 play a role in that?

13 A Yes, it did. In fact, just -- you know, you
14 brought to my attention the fact that these all involved
15 abducting a victim and trying to get her into a car,
16 either his car or her car, so there really was a very
17 common theme or an MO that was similar between the
18 offenses.

19 Q Earlier you were asked a question whether -- and
20 you testified regarding whether the burden of proof in a
21 clinical setting is different than the burden of proof
22 in a court setting. Could you elaborate on that a little
23 bit?

24 A Well, I think the standard would be higher in a
25 court setting than a clinical setting. I certainly think

1 the consequences are greater. I mean, we're talking here
2 about civil commitment, which would be, you know,
3 denying a man his civil rights and not letting him out
4 into the community, again, even though he served his
5 sentence, and, you know, these are very difficult
6 judgments to make. Either way, there are significant
7 consequences. You've got the civil rights of the
8 defendant versus the protection of the community, so I
9 think the standards are higher than in just merely a
10 clinical setting.

11 Q With regard to your diagnosis of paraphilia not
12 otherwise specified, in conducting your evaluation, did
13 you take that diagnosis lightly?

14 A Not at all, no, no.

15 Q And finally, that -- just for clarity, that
16 particular diagnosis, paraphilia not otherwise
17 specified, is it your opinion that that is a diagnosis
18 in the Diagnostic and Statistical Manual?

19 A Paraphilia NOS is a diagnosis in the DSM, yes.

20 MR. LOCKRIDGE: I have nothing further, Your
21 Honor. THE COURT: Thank you. Mr. Bell?

22 MR. BELL: Just a couple, Your Honor.

23 EXAMINATION

24 BY MR. BELL:

25 Q Without a diagnosis in this case, without a

1 diagnosis of paraphilia NOS, nonconsent, would it be
2 your opinion that Mr. King would be a sexually dangerous
3 person under the act?

4 A No.

5 Q And I think you testified just a minute ago that
6 it's your experience that individuals that are
7 incarcerated are less likely to act on these intense
8 sexually arousing fantasies than they are if they are
9 out in the world, out in the public where they are
10 subject to being arrested and sent to prison.

11 A What I said was that usually being incarcerated
12 has an inhibiting affect on sexual misconduct. Offenders
13 are less likely to act in a sexually deviant manner
14 because it's easier to get caught and get sanctioned
15 and, you know, get in further trouble, have their
16 sentences extended and so on. It's harder to get away
17 with it than it might be in the community.

18 Q But in Mr. King's particular case, he had any
19 number of infractions and problems while he was
20 incarcerated, did he not?

21 A He did, yes.

22 Q For many, many things, none of which were
23 sexually related except for the one incident with this
24 female staff person, is that right?

25 A Correct.

1 MR. BELL: Nothing further, Your Honor.

2 THE COURT: Mr. Lockridge, any follow-up?

3 MR. LOCKRIDGE: Nothing further.

4 THE COURT: Doctor Zinik, I had a couple of
5 questions. Let me follow up on the statement you just
6 made that if you had not diagnosed Mr. King as having
7 paraphilia NOS, nonconsent, you would not have found him
8 to be a sexually dangerous person. I'm interested in the
9 basis for that. Is that because he does not -- he would
10 not then have other serious mental illnesses, or would
11 it act more on the volitional element of the definition
12 or some other basis?

13 THE WITNESS: It would certainly influence the
14 volitional impairment aspect of the definition. I mean,
15 if I believe that Mr. King did not have the paraphilia
16 NOS, nonconsent diagnosis and he wasn't likely to commit
17 sexually violent crimes, I mean, I certainly wouldn't
18 rule out the possibility that he may commit other
19 violent crimes, nonsexual violent crimes, assault,
20 robbery and so on. I'm certainly not saying that he
21 would not be dangerous in other respects, but I don't
22 think he would meet the threshold of committing a
23 sexually violent crime as required by the statute.

24 THE COURT: Is exhibitionism a serious mental
25 illness?

1 THE WITNESS: I would say it is, but by itself
2 I don't think it would be enough to qualify under the
3 statute.

4 You know, on the other hand, I think that Mr.
5 King's -- his paraphilia NOS and his exhibitionism are
6 sort of merged, as I said before, kind of synthesized
7 into one disorder, and, in fact, I think, you know, the
8 paraphilia NOS, the exhibitionism, the polysubstance
9 dependence and the antisocial personality disorder
10 altogether I think have an additive effect. In
11 combination, they're -- you know, the sum is greater
12 than the -- or the whole is greater than the sum of the
13 part, so to speak. I think that is a very dangerous
14 combination of sexual -- a very dangerous combination of
15 mental disorders that together predisposes him to commit
16 sexually violent crimes more than any one of those
17 things would alone.

18 THE COURT: The polysubstance dependence would
19 have that affect even though he has stated that he took
20 heroin actually to repress his urges?

21 THE WITNESS: That is correct, in prison, yes.

22 THE COURT: Yes.

23 THE WITNESS: Yes. And he used meth out in the
24 community to stimulate him and enhance his sexual
25 experiences when he was offending.

1 THE COURT: In the field of forensic
2 psychology, is the term serious mental illness or
3 serious mental illness, abnormality or disorder, is that
4 a recognized term?

5 THE WITNESS: Well, I think it is, yes, but it
6 depends on the context to some extent, yes.

7 THE COURT: What does it mean to you in the
8 context of the opinions that you've developed in this
9 case?

10 THE WITNESS: Well, it means to me that Mr.
11 King meets that criteria and that he is seriously
12 impaired and that he cannot control his behavior and
13 that it puts him at high risk to be violent in the
14 future and he has not been treated for that disorder. I
15 don't believe he has -- sometimes the term serious
16 mental illness refers to a psychotic disorder like
17 schizophrenia or bipolar disorder involving a thought
18 disorder, psychotic feature, so in some contexts that's
19 what serious mental illness refers to, but I would say
20 in this context certainly this combination of mental
21 disorders rises to the level of serious mental disorder.

22 THE COURT: And seriousness in what sense?

23 THE WITNESS: Seriousness in terms of the
24 consequences, you know, the very serious consequences
25 that this has for him as well as the victims that he's

1 likely to assault. I mean, imagine the terror those
2 women experienced that were the victims of his offenses.
3 I think that's very serious.

4 THE COURT: I know one of these charts used
5 the term sign, and in your testimony you
6 distinguished -- I understood you to distinguish signs
7 and symptoms. What's the difference between those two,
8 if there is one?

9 THE WITNESS: Typically signs refer to
10 behavior, observable behavior, and symptoms refer to,
11 you know, the subjective report of the individual's
12 feelings and subjective states.

13 THE COURT: In your experience, is it unusual
14 to have a case in which there are relative -- of outward
15 manifestations of the sexual element of offense conduct?

16 THE WITNESS: You mean like for -- the fact
17 that these appear to be attempted offenses rather than
18 fully executed offenses? Yeah, okay. I would say yes, I
19 think it is unusual, yes.

20 THE COURT: Mr. Lockridge, any follow-up to my
21 questions, sir?

22 MR. LOCKRIDGE: Just one question, Your Honor.

23 THE COURT: Yes, sir.

24 EXAMINATION

25 BY MR. LOCKRIDGE:

1 Q With respect to Mr. King's sexual behaviors as
2 you described them, how does he manifest those in his
3 case?

4 A How does he manifest --

5 Q Or how does he act out on his -- when he's
6 committing his offenses, how has he acted out on those?

7 A Well, I think these -- you know, these were --
8 you know, we've got an incident of sexual exposure, his
9 first offense. We've got the second offense in which he
10 did expose his penis and ask the victim to touch it or
11 force the victim to touch it,
12 and then the other three were all attempted sexual
13 crimes.

14 And I think Mr. King himself testified in the
15 presentence investigation report in 1988 -- well, we
16 know that he said that these were -- the intent was
17 sexual assault, and he also said -- I don't remember
18 exactly where, but I know he said it -- that he got
19 sloppy and he got too -- you know, he didn't prepare
20 carefully and that these offenses, the more recent
21 offenses in which he got caught, he got sort of
22 overexcited and did not follow his typical precautionary
23 measures and so on and he got caught.

24 So, you know, I think that he -- you know, these
25 were attempted sexual assaults that were interrupted and

1 his intent was to sexually assault the victims. I'm not
2 sure if that answers the question, but I remember that
3 statement.

4 Q In your opinion, does Mr. King "get off" by
5 engaging in sex or in the power of engaging in sex,
6 sexual acts?

7 A Are you asking me is he turned on by having
8 power and control over a female in a sexual way? Is that
9 the question?

10 Q That's correct.

11 A Yes, I think he is. I think that's the hallmark
12 of his paraphilia.

13 MR. LOCKRIDGE: Nothing further, Your Honor.

14 THE COURT: Thank you, sir. Mr. Bell?

15 MR. BELL: No, Your Honor.

16 THE COURT: Very good. Thank you, Doctor
17 Zinik.

18 MR. LOCKRIDGE: Thank you, Your Honor.

19 THE COURT: I know it's late in the day, but
20 we got started late. I'm inclined to forge ahead and see
21 if we can get a little bit done with the next witness.
22 Is that satisfactory to the Government?

23 MR. GRAY: Yes, Your Honor.

24 THE COURT: Mr. Gray?

25 MR. GRAY: At this time, I'd like to call our

1 next witness, Mr. Daniel King.

2 DANIEL KING, having been duly sworn, was
3 examined and testified as follows:

4 COURT CLERK: Sir, please state your name for
5 the record.

6 THE WITNESS: I'm Daniel H. King.

7 EXAMINATION

8 BY MR. GRAY:

9 Q Good afternoon, Mr. King.

10 A Good afternoon.

11 Q Mr. King, let me ask you a question that will
12 help get to the heart of one of the issues at stake
13 here. Do you consider yourself a sexual offender?

14 A No, I don't.

15 Q Why is that?

16 A Because according to statutes of law, I've not
17 been convicted of any sex offense, nor have I attempted
18 to engage in any sex offense, nor have I ever been
19 charged in any sex offense other than as a juvenile, an
20 indecent exposure charge -- was a misdemeanor.

21 Q Yet, Mr. King, you made a request while you were
22 at Butner or while you were in the Federal prison system
23 to attend the sexual offender treatment program at
24 Butner. Why did you do that if you aren't a sex
25 offender?

1 A I had an option. I was getting ready to get sent
2 back to United States Penitentiary in Atlanta or I could
3 engage in a program with FCI Butner. I didn't care what
4 program I engaged in. I wasn't trying to go back to USP
5 Atlanta, so I made that request and I was denied by
6 Doctor Richard Hilkie (phonetic) who was in charge of --
7 program because his statement was I didn't have a
8 current sex offense -- an instant sex offense and
9 therefore was not qualified to be in the program, nor
10 was I close enough to a release date.

11 Q Was that your only time with making a request to
12 enter into the sex offender treatment program?

13 A That's the only time.

14 Q Have you had any sexual offender treatment at
15 all while you were in the Federal prison system?

16 A Not per se, no.

17 Q You say not per se. What do you mean by that?

18 A Not labeled as sex offense treatment, no.

19 Q What kind of treatment have you received, sir?

20 A I received psychological counseling.

21 Q What kind of psychological counseling?

22 A Mostly anger management, family counseling, just
23 general counseling.

24 Q And in the course of this general counseling,
25 did it touch upon your offenses?

1 A Sure.

2 Q Did you discuss the offenses that you had been
3 convicted of?

4 A Sure, I did.

5 Q How about discussing your family history?

6 A Absolutely.

7 Q Why did you engage in that treatment?

8 A Well, trying to get a better understanding of
9 myself and my actions and the way I carry myself in
10 life.

11 Q While you were trying to gain a better
12 understanding of your actions and how you carry yourself
13 in life, were there any counselors or treatment
14 providers that you found were particularly helpful?

15 A Well, as a rule, at most institutions when you
16 get to engage in -- if you're lucky enough to engage in
17 counseling, you get put with an intern who is under the
18 auspice of a doctor or psychologist, so I found a few
19 that were helpful, but as a rule, it just helped me do
20 my time.

21 Q What do you mean by it just helped you do your
22 time?

23 A It just helped my time to go by, to help, to
24 assist to try to do what I could.

25 Q So are you saying that you were not really

1 trying to participate in the counseling and the -- and
2 the help?

3 A No, I'm not saying that at all. I'm saying I've
4 been incarcerated for a large amount of years. Yes, it
5 helped me do my time because it helped me remain calm
6 and cool while I was in prison pretty much.

7 Q So when you say to help you do your time, it was
8 a therapeutic value for you?

9 A Sure, it was.

10 Q Now, Mr. King, we've shown you what was
11 previously a big board and a binder that was an exhibit
12 that was marked as Government Exhibit Number 56. I'm
13 going to bring it up on our screen. It'll be on the
14 screen in front of you.

15 A Sure.

16 Q Do you see that in front of you?

17 A Yes, I do.

18 Q Is that the exhibit that we've been referring to
19 as a timeline?

20 A Yes, I believe it is.

21 Q Can you see it okay? I want to make sure that
22 you can read it.

23 A Yeah. I'm fine -- put my glasses on if I need
24 to.

25 Q Okay.

1 A Yeah. I'm cool.

2 Q Great. And I sometimes have trouble reading
3 small text, too, so if we get to a point where you have
4 a little trouble reading, please let me know, okay?

5 A Sure.

6 Q What I'd like to do is I'd like to just start
7 walking through some of your history, if that's all
8 right with you. That second block that starts with 1971
9 to 1974 -- and what I'm going to do is just to make sure
10 you were talking about the same block, I'm going to put
11 a blue arrow next to that block. Do you see that blue
12 arrow?

13 A Yes, I do.

14 Q It says that between the ages of 12 to 15, you
15 were seen by various doctors in Fairfax County for
16 sexual exposure and obscene phone calls.

17 A That's correct.

18 Q Did that happen?

19 A For the indecent exposure charge that I had in
20 1974, yes, it did.

21 Q What was the indecent exposure charge that you
22 had in 1974?

23 A The one that's been spoken of several times
24 today that occurred in the park there near where I lived
25 at and grew up.

1 Q So would that be the indecent exposure charge
2 that is -- and I'll put another mark there -- that's
3 marked in the block of red right below it that has the
4 little blue mark next to it?

5 A Yes, it is.

6 Q So that 1971 to 1974 block that's above that red
7 block where it says seen by various doctors in Fairfax
8 County for sexual exposure and obscene phone calls,
9 there were no sexual exposures during that time period?

10 A In 1974, there was, the one that you got marked
11 with the blue mark now.

12 Q But other than that one in 1974 that's marked
13 with the blue mark, between 1971 and 1974, there were no
14 sexual exposures?

15 A No, there was not.

16 Q Now, there were obscene phone calls.

17 A No, there was not.

18 Q So there were no obscene phone calls and no
19 sexual exposures from 1971 to 1974 as indicated in that
20 block?

21 A No, sir. Obscene phone calls would have been
22 almost impossible for me at that age. I could hardly
23 speak.

24 Q And when you say it would be impossible for you
25 at that age, why do you say that? You said you could

1 hardly speak --

2 A Because I was just learning how to talk. I had
3 just had my ears fixed and I was learning to speak.

4 Q It says that you were seen by a number of
5 doctors in Fairfax County, so did those visits occur?

6 A Yes.

7 Q What were those visits for?

8 A Mainly because I was dealing with numerous
9 amounts of surgeries on my legs. I was having problems
10 accepting that and being basically alienated by other
11 people because, one, I was learning how to deal with
12 people because I was just learning to hear and speak
13 and, two, I was learning to rewalk and deal with a lot
14 of pain and frustration with the bone operations I was
15 having in my legs. So I was angry and I was getting a
16 lot of treatment for physiological problems and
17 psychological problems at the same time.

18 Q Now, you say you were getting treatment for
19 psychologic problems. Did any of those psychological
20 problems have anything to do with any sort of sexual
21 activities that you were engaged in?

22 A Not up until that time. 1974 is when that
23 started.

24 Q Now, Mr. King, what I'd like to do now is I'd
25 like to take you to that event in 1974 that you said was

1 indecent exposure, the one that had the blue mark next
2 to it that's on Government Exhibit Number 56, that first
3 page. It reads April, May, 1974, age 15, arrested for
4 indecent exposure to two girls ages seven and eight.

5 Can you tell us a little bit about that?

6 A You want to know exactly what -- I mean, you
7 want to know about the incident? Is that what you're
8 asking?

9 Q Yes, sir. What happened?

10 A Basically I was walking in the park. I came
11 across two young girls who were fishing on the other
12 side of the creek, and being high and intoxicated and
13 just being mean, I exposed myself to them.

14 Q Why did you do that?

15 A Being mean.

16 Q What about exposing to -- yourself was mean?

17 A Well, I was just being mean. I was being mean.
18 I was being a bully.

19 Q Was that your first incident of exposing
20 yourself?

21 A Yes, it was.

22 Q Prior to that time, there had been no other
23 incidents of exposure?

24 A No.

25 Q Now, as a result of that exposure that took

1 place in May, 1974, what happened?

2 A I eventually got arrested and I got charged with
3 indecent exposure and I pled guilty to it and I got a
4 one year unofficial supervision and I had to receive
5 psychological counseling, continuous psychologic
6 counseling.

7 Q Now, Mr. King, with regard to that incident that
8 took place with those girls at the age of seven and
9 eight, did you know how old they were?

10 A No, I did not.

11 Q Did you think they were 15 years old?

12 A No. I didn't really care.

13 Q Did you speak to the girls and ask them to touch
14 your penis?

15 A I may have. I don't honestly recall if I did or
16 not.

17 Q As a result of being arrested, did you engage in
18 any counseling?

19 A Yes, I did.

20 Q What kind of counseling was that?

21 A Just general psychological counseling.

22 Q Given that the nature of the offense was you
23 exposing your genitals, was any of the counseling sex
24 related?

25 A Not per se. I mean, I never heard of sex

1 offender treatment, so I can't -- when I was going to
2 treat at that age, it was psychological counseling. You
3 dealt with anything and everything.

4 Q And just to be clear, did any of the
5 psychological counseling that you were engaged in -- did
6 that deal with sex and sexual offenses?

7 A No, it did not target that. No, it did not.

8 Q Now, Mr. King, with regard to that exposure to
9 the girls that were seven and eight and counts that you
10 were convicted of, were you provided any probation after
11 that offense?

12 A From the courts, yes, I was.

13 Q During that probation, were you informed that
14 you should not engage in that sort of activity again?

15 A Sure, absolutely.

16 Q Now, Mr. King, with regard to that incident that
17 took place in 1974, they discussed that incident with
18 you when you were being interviewed for your sentence as
19 a result of the 1988 conviction, your instant offense,
20 isn't that right?

21 A I'm sure we did, yeah.

22 Q And there was an interview by a person from
23 pretrial services?

24 A For the presentence investigation, yes.

25 Q And that person had a chance to talk to you?

1 That was around 1988?

2 A Correct.

3 Q When that person spoke to you, did they tell you
4 that it was important for you to tell the truth?

5 A They didn't specifically say that, but, I mean,
6 they just asked me to talk to him and tell him my
7 version, what was happening in my life.

8 Q And after you had a chance to talk to them, did
9 they tell you they were going to prepare a report?

10 A Sure.

11 Q Did you get a copy of that report?

12 A Yes, I did.

13 Q At that 1988 conviction, were you represented by
14 an attorney?

15 A Yes, I was.

16 Q Who was your attorney?

17 A I had two attorneys, Greta Van Susteren and Mr.
18 Russell Caheen.

19 Q Was that Greta Van Susteren of Fox News fame?

20 A Currently.

21 Q Did she get a chance to advise you about that
22 offense in 1988?

23 A We didn't discuss it.

24 Q You didn't discuss it?

25 A No, because it wasn't pertinent to my instant

1 offense. At that point in time, it was almost 20 years
2 old.

3 Q You had an opportunity to read the presentence
4 report, correct?

5 A Yes, I did.

6 Q Did Ms. Greta Van Susteren or your other
7 attorney tell you that you had the opportunity to object
8 to anything within there that's not true?

9 A Yeah.

10 Q Now, what I'd like to do is I'd like to turn
11 your attention to what we've marked as Government
12 Exhibit Number 23. I'm going to turn to the page that's
13 Bates number 868. I know it's in that binder in front of
14 you, but I'll bring it up on the screen for you, okay?
15 Do you see that on your screen?

16 A Yes. It is.

17 Q Okay. I'm going to enlarge that just a little
18 bit so that you can read it a little clearer. Is that
19 text big enough for you?

20 A Sure, it is.

21 Q Great. It says -- we're looking at a section at
22 the page that's Bates stamped 868 in Exhibit Number 23,
23 and there's a portion in there that says social history
24 and right below that it says family history. Do you see
25 that?

1 A Yes.

2 Q Now, you had an opportunity to read this PSR
3 prior to it being admitted to The Court, right?

4 A Yes.

5 Q Mr. King?

6 A Yes.

7 Q And you had an opportunity to provide
8 objections, is that right?

9 A Yes.

10 Q And if we take a look at the paragraph that is
11 right below that, it talks about how you were -- your
12 parents -- your father had retired from a job with the
13 Federal government and your mother was an aide at
14 Chantilly High School in Virginia, is that right?

15 A Yeah.

16 Q And underneath that it says that -- the next
17 paragraph indicates that you were -- very unstable
18 development as a result of your actions. Do you see that
19 paragraph?

20 A Yes.

21 Q And it says you were -- was a disruptive factor
22 in your home since approximately 12 years old?

23 A That's correct.

24 Q And your parents sought to get help for you by
25 professionals, but you were told that you were going to

1 outgrow the problem. Does that say that right there?

2 A Yes, it does.

3 Q And that the paragraph right below that starts
4 off by saying that both defendant and his parents had
5 reported that defendant never got along well with women.
6 Does that say that right there?

7 A Yes, it does.

8 Q And that he became easily angered at his mother
9 over something that would not have bothered him had his
10 father been in the same position. Does that say that
11 right there?

12 A Yes, it does.

13 Q Now, you had an opportunity to review this and
14 object to any materials that were not true, isn't that
15 right?

16 A Yes.

17 Q And you didn't lodge any objections as a result
18 of any of those statements that are within that
19 document, did you?

20 A I don't recall any objections at this particular
21 part here, no.

22 Q In fact, on the next page is where your counsel
23 pointed out that your mother noted that you were "a
24 chronic liar" and at times unable to tell the truth?

25 A Correct.

1 Q And that the paragraph right above where it says
2 education and training, that at that time your parents
3 felt that you have demonstrated that you were powerless
4 to control your behavior. Does that say that?

5 A Yes, it does.

6 Q Now, Mr. King, within this document, there's
7 discussion about your prior criminal record, stating
8 that you had convictions in '83 and in '88, is that
9 correct?

10 A Yes.

11 Q And, Mr. King, this document -- and we are at
12 Bates number 870 -- and I'll show you that on the
13 screen.

14 MR. GRAY: And, Mr. Bell, if you care to
15 follow along, we're on page 870.

16 BY MR. GRAY:

17 Q There's a paragraph that says with respect to
18 defendant's emotional -- he has a long history of
19 participation in various forms of psychologic and
20 psychiatric counseling. Is that correct?

21 A That's what it says.

22 Q And it says that according to information in the
23 probation records, starting at the age of 12, defendant
24 was first seen by Doctor William Morgan, is that
25 correct?

1 A Yes.

2 Q And it says right in that same paragraph that
3 you were seen by various doctors in Fairfax County
4 Mental Health Clinic in relation to his exposures and
5 obscene phone calls. Does that say that in there?

6 A That's what it says.

7 Q You did not object to that language being in
8 there when you originally saw the PSR, did you?

9 A No. I don't recall a particular objection to
10 that, no.

11 Q Yet you still maintain that you did not engage
12 in any exposures or obscene phone calls?

13 A That's what I'm saying. This information came
14 from my parents. It did not come from me. They are
15 entitled to say how they feel. I honestly didn't read it
16 that much at that particular time. Greta did and so did
17 Russell, and if they didn't object, I'm fine with it.

18 Q Mr. King, I'm going to go back to Exhibit Number
19 56. I have it back on your screen. I want to turn your
20 attention now to the block that says 1975. It's the
21 green block --

22 THE COURT: Mr. Gray, let me interrupt, sir.
23 If we're going to get on to another matter, perhaps this
24 would be a good time to take our evening recess. I
25 assume you have more than just a couple minutes worth of

1 questions.

2 MR. GRAY: Yes, Your Honor. If it goes with
3 The Court's time to take a break and take a recess at
4 this time, I think this is a good time to stop.

5 THE COURT: Okay. Very good. We'll take our
6 evening recess in just a moment, but I was having
7 trouble matching up the page numbers you were citing
8 with the copy of Government's Exhibit 23 that I have.
9 Some of these page numbers are obscured as well.

10 MR. GRAY: Yes, Your Honor. I know that some
11 of those page numbers are obscured, and what I'm doing
12 is using page numbers as they were generated by our
13 discovery methods. The disks that we provided over to
14 Defense Counsel -- and just for the sake of
15 demonstration, I will bring up on the screen the last
16 document.

17 Your Honor, what I have is if you look up in
18 the upper left hand corner, it has a page number which
19 corresponds to the Bates number. Well, it should
20 correspond to the Bates number. It may be off, so what
21 I'll do, Your Honor, is I will --

22 THE COURT: Could you go to the top of that
23 page Mr. Gray?

24 MR. GRAY: Yes, Your Honor.

25 THE COURT: I'm interested in seeing if

1 there's a page number at the top, because this is on my
2 copy. That's Bates -- now, the Bates number on the page
3 that you're showing on my copy is 859.

4 MR. GRAY: Your Honor, I think -- Your Honor,
5 I'm sorry. There are multiple copies. Unfortunately,
6 with our discovery process, there were multiple copies
7 of the documents that were included, so 859 is the same
8 document as 870.

9 THE COURT: Well, I've been able to follow
10 this, but my overriding concern is that the record be
11 clear so somebody reviewing the transcript -- obviously
12 doesn't have the privilege of being here -- could find
13 the documents among the exhibits that are being
14 referenced.

15 MR. GRAY: Yes, Your Honor. I'll make sure
16 that I cross-check those Bates numbers again just to
17 make sure that we're all dealing with the same
18 documents. It's part of the reason why we wanted to
19 make sure we were showing the same document on the
20 screen, just to make sure we were all dealing with same
21 set of facts.

22 THE COURT: That's fine. Well, it appears to
23 me that the document that you're referring to as 870
24 is -- in The Court's copy of the exhibit is Bates
25 stamped 859, and I would note that there's continuous

1 page numbering at the tops of these pages, so that
2 certainly facilitates locating the appropriate page.

3 MR. GRAY: Yes, Your Honor, and I apologize.
4 Our electronic version of the exhibits has multiple
5 copies. The books and the binders that we're using all
6 have the same page number of 859, so this is my mistake.

7 THE COURT: That's quite all right. I just
8 want to make sure we've addressed it and move on. Very
9 good. Is there anything further before we take our
10 recess?

11 MR. BELL: No, Your Honor.

12 MR. GRAY: No, Your Honor.

13 THE COURT: Well, very good. We'll be in
14 recess until nine a.m. tomorrow morning.

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17 WHEREUPON, the hearing was suspended at 4:59 p.m.

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CERTIFICATE

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3 I, Glynde M. Jones, Notary Public in and for the
4 State of North Carolina, do hereby certify that the
5 foregoing transcript of proceedings taken in the United
6 States District Court is a true and accurate
7 transcription of the shorthand notes of the proceedings
8 taken by me in machine shorthand and transcribed by
9 computer under my supervision.

10

11 Dated this 2nd day of November, 2011.

12

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Glynde M. Jones

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GLYNDE M. JONES, NOTARY PUBLIC

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Notary Public Number: 20022120063

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